

**TRANSCRIPT
OF
RECORD**

8

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 217.

ALEJANDRO MONTELIBANO Y RAMOS AND LIGERIA
MONTELIBANO Y CONLU, APPELLANTS AND PLAIN-
TIFFS IN ERROR,

vs.

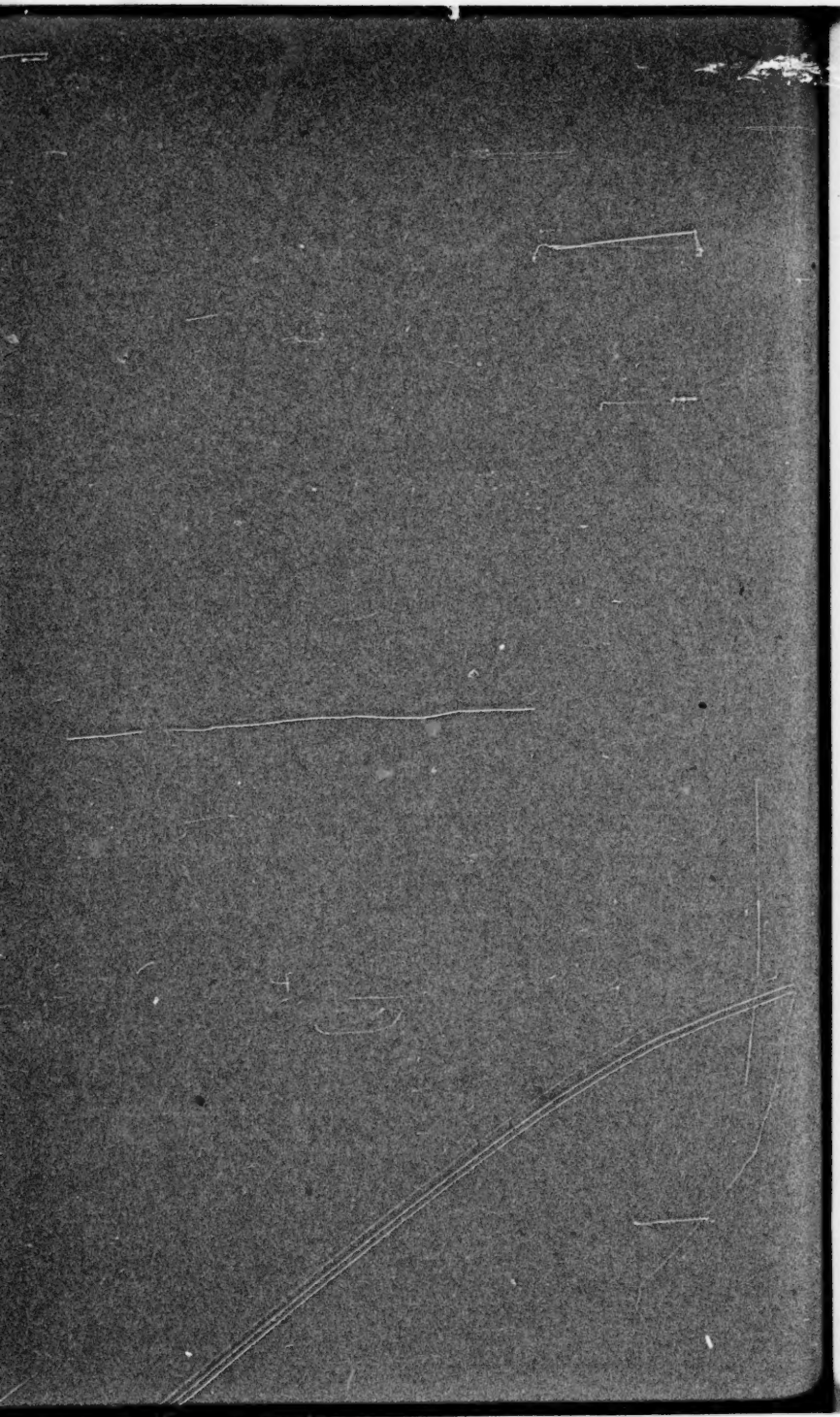
LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

FILED AUGUST 5, 1914.

(24,329)

2



(24,329)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 217.

ALEJANDRO MONTELIBANO Y RAMOS AND LICERIA
MONTELIBANO Y CONLU, APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

INDEX.

Original. Print

Transcript of record from the court of first instance of the judicial district of Manila.....	1	1
Notice as to bill of exceptions.....	1	1
Bill of exceptions.....	2	1
Answer and cross-complaint.....	3	2
Exhibit A—Contract between Compañía General de Tabacos de Filipinas and Don Ale- jandro Montelibano y Ramos, Octo- ber 25, 1905.....	9	5
B—Contract between Compañía General de Tabacos de Filipinas and Don Alejandro Montelibano y Ramos, December 7, 1908.....	23	13
Notice of motion for appointment of a receiver.....	32	18
Answer to cross-complaint.....	33	18

Motion by defendant for permission to amend cross-complaint, etc.	35	20
Decision	38	21
Motion for a new trial.....	45	25
Motion for a new trial denied.....	45	25
Motion to approve bill of exceptions.....	45	25
Order approving bill of exceptions, etc.....	46	26
Clerk's certificate to bill of exceptions, etc.....	46	26
Stipulation amending bill of exceptions.....	48	27
Amended complaint	48	27
Order approving stipulation, etc.....	56	32
Order of submission.....	56	32
Opinion <i>per curiam</i>	57	33
Judgment	59	34
Clerk's certificate	60	34
Certificate as to appeal.....	61	35
Certificate as to writ of error.....	62	35
Præcipe for transcript of record.....	63	36
Petition and allowance of appeal.....	64	36
Assignment of errors on appeal.....	65	37
Citation and service on appeal.....	66	38
Petition for a writ of error.....	67	39
Assignment of errors attached to petition for writ of error....	68	39
Writ of error and allowance.....	69	40
Citation and service of writ of error.....	71	41
Bond on appeal and writ of error.....	72	42
Certified copy of judgment.....	74	43

1 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, hereby certify that the following is a true and correct translation and transcript of the Bill of Exceptions presented in Cause G. R. No. 8837 of the Supreme Court, entitled Alejandro Montelibano et al., Plaintiffs and Appellants, versus La Compañia General de Tabacos de Filipinas, Defendant and Appellee:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Civil Case. No. 8461.

ALEJANDRO MONTELIBANO Y RAMOS and LICERIA MONTELIBANO Y
CONLU, Plaintiffs and Appellants,
versus
LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant and
Appellee.

Messrs. Bruce, Lawrence, Ross & Block, Attorneys.

2 You are by the present notified that on the 11th of March, 1913, we presented to the Honorable Judge Crossfield, Judge of First Instance of Manila, a bill of exceptions, and that after the expiration of ten days from said date we will request the approval of the same. You are also notified that we will immediately request the suspension of the execution issued.

Manila, P. I., March 11, 1913.

(Signed)

ROHDE & WRIGHT,
Attorneys for Plaintiffs,
103 Anloague, Manila, P. I.

Received copy on March 11, 1913.

(Signed)

BRUCE, LAWRENCE, ROSS & BLOCK.

Presented on March 11, 1913, at 10.30 a. m.

(Signed)

J. McMICKING, *Clerk.*

(Heading and Title Omitted.)

Bill of Exceptions.

Let it appear by the present bill of exceptions that in the above-entitled cause the following proceedings took place in the Court of First Instance of the Judicial District of Manila:

On the 3rd day of January, 1911, the company defendant and appellee presented the following answer and cross-complaint against the plaintiffs and appellants:

3

(Heading and Title Omitted.)

Answer.

Comes now the defendant in the above-entitled action, and, answering the amended complaint of the plaintiff herein:

Admits the allegations contained in the first, second, and third paragraphs of said amended complaint, and denies each and every allegation contained in each and every other paragraph of said amended complaint.

As a further separate and affirmative defense, and by way of cross-complaint against the said plaintiffs, defendant alleges:

I.

That it is a corporation duly constituted and authorized to do business in the Philippine Islands, and domiciled in the city of Manila.

II.

That the plaintiffs Alejandro Montelibano y Ramos and Liceria Montelibano y Conlu are husband and wife, and reside in the municipality of Bacolod, province of Occidental Negros, Philippine Islands.

III.

That on the 10th day of November, 1905, defendant and plaintiffs entered into a certain contract in writing, a copy of which is hereto attached, marked "Exhibit A" and made a part hereof.

IV.

4 That on the 7th day of December, 1908, defendant and plaintiffs entered into another certain contract in writing, supplemental to and modifying in certain respects the said contract "Exhibit A", a copy of which said contract of December 7, 1908, is hereto attached, marked "Exhibit B" and made a part hereof.

V.

That defendant duly delivered to the said plaintiff, Alejandro Montelibano y Ramos, all the credits described and included within

the provisions of the aforesaid contracts, amounting to the sum of P179,177.86; a list of the said credits being hereto attached, marked "Exhibit C" and made a part hereof; and has complied with all the terms and conditions of the aforesaid contracts on its part to be performed.

VI.

That on or about the 11th day of October, 1907, the plaintiff Alejandro Montelibano y Ramos paid to the defendant the sum of P20,000.00, in the manner and form shown by clause V of the said contract "Exhibit B", the said payment of P20,000.00 being the first instalment of the sum of P130,000.00 agreed by the said plaintiff in the aforesaid contracts to be paid, under the provisions of said contracts whereby the said plaintiff had the option of purchasing and acquiring the ownership of said credits for the said sum of P130,000.00; and that no payment other than the said sum of P20,000.00 has been made by said plaintiff either on account of the said sum of P130,000.00 or otherwise, except the sum of P736.95.

VII.

5 That after the expiration of the term fixed by the said contracts within which the said plaintiff, Alejandro Montelibano y Ramos, had the option to purchase the said credits, as aforesaid, at the expiration of which said period the said plaintiff was, by the terms and conditions of the said contracts, obligated to account for all sums of principal and interest collected on account of said credits, and to account for and return to the defendant all credits remaining uncollected, the defendant demanded of the said plaintiff that he render accounts of his transactions in connection with the said credits as agent of the defendant, in accordance with the provisions of the said contracts, that he pay over to defendant all sums of principal and interest collected, and account for and return to defendant all uncollected credits, but the said plaintiff refused, and still refuses, to comply with the said demand, to pay over any sums collected by him, to render accounts, or in any manner to comply with his obligations under said contracts.

VIII.

That the said plaintiff, Alejandro Montelibano y Ramos, in violation of the express terms of the said contract "Exhibit B", and notwithstanding the repeated demands of defendant, has retained and still retains in his possession the original of the said contract "Exhibit B", and up to the present time has failed and refused to cause the said contract to be recorded in the registry of property or to deliver the same to defendant, thereby prejudicing the value of the security of the mortgages included in said contract "Exhibit B" and subjecting the defendant to the danger of a total loss of said security.

IX.

That defendant is informed and believes, and therefore alleges, that said plaintiff, Alejandro Montelibano y Ramos, has collected and has in his possession considerable sums of money collected on account of the credits, the property of the defendant, described in the said contracts, and, notwithstanding the provisions of the said contract "Exhibit B" that, in case the said plaintiff should not pay the instalment due to defendant in the month of March, 1909, the said plaintiff should pay over to defendant all sums received by him and return the credits remaining uncollected, the said plaintiff, Alejandro Montelibano y Ramos, in violation of his aforesaid contracts and with the intent to defraud the defendant, has failed and refused to pay over or account for any of the moneys collected by him, but retains such moneys in his possession and has appropriated the same to his own use.

X.

That in order to determine the exact amount due to the defendant from the said plaintiff, Alejandro Montelibano y Ramos, it is necessary that the said plaintiff render accounts to the defendant of his transactions concerning said credits; that said credits are in danger of being lost or materially injured, unless a receiver is appointed to care for and preserve the same, and that the value of such credits as remain uncollected and of the properties included in the aforesaid mortgages will probably be insufficient to discharge the indebtedness of said plaintiff to defendant.

XI.

7 That all the credits included and described in the said contracts and appearing in the list marked "Exhibit C" are secured by mortgages upon real property, and in view of the failure and refusal of the said plaintiff Alejandro Montelibano y Ramos to return to the defendant such of said credits as remain uncollected, the securities belonging to the same are in danger of being lost, wasted, or materially injured.

XII.

That by reason of the failure and refusal of the said plaintiff, Alejandro Montelibano y Ramos, to return to the defendant the said credits remaining uncollected, and by his fraudulent use and misappropriation of the moneys collected by him under said contracts, the said defendant has been damaged in the sum of Fifty Thousand Pesos (P50,000.00).

Wherefore, defendant prays:

- (a) That the action of the plaintiffs be dismissed;
- (b) That the plaintiff, Alejandro Montelibano y Ramos be required to render accounts of all sums collected by him under the aforesaid contract, of the credits remaining uncollected, and of all

his doings and transactions under and by virtue of the aforesaid contracts;

(c) That when the amount due from the said plaintiff Alejandro Montelibano y Ramos to the defendant is ascertained, judgment be rendered in favor of defendant and against said plaintiff, Alejandro Montelibano y Ramos, for said sum and for the further sum of Fifty Thousand Pesos (P50,000.00) damages, together with costs;

(d) That a receiver be appointed to care for and preserve, pending the final determination of this action, all the aforesaid credits remaining uncollected, all sums of principal and interest collected by the plaintiff Alejandro Montelibano y Ramos on account of the said credits, and the property, real and personal, mortgaged by plaintiffs to defendant by the said contracts "Exhibits A and B," and that the said plaintiffs be ordered to immediately deliver to such receiver all of the said moneys, credits, and properties;

(e) For such other and further relief as to the court may seem just and equitable.

(Signed)

BRUCE, LAWRENCE, ROSS &
BLOCK,

Attorneys for Defendant, 15 Plaza Moraga, Manila.

(Heading Omitted.)

José Rosales, being first duly sworn, deposes and says:

That he is the General Manager of the Compañía General de Tabacos de Filipinas, defendant in the above-entitled action; that he has read the foregoing answer and cross-complaint, knows the contents thereof, and that the same are true, to the best of his knowledge and belief.

(Signed)

COMPANIA GRAL. DE TABACOS DE
FILIPINAS.

General Manager, J. ROSALES.

Subscribed and sworn to before me, in Manila, P. I., this 26th day of June, 1911, deponent exhibiting to me his personal cedula No. C39, issued at Manila, P. I., on the 3rd day of January, 1911.

The foregoing is document number 42 in my official register, and is recorded at page 10 of my said register.

(Signed)

JAMES ROSS,

Notary Public.

My commission expires December 31, 1912.

EXHIBIT "A".

The undersigned, Doña Liceria Montelibano y Conlú, married, of age, occupied with her housewifely duties, assisted by her husband, Don Alejandro Montelibano y Ramos, of age, farmer, both residents of Silay, Occidental District of the Island of Negros, and at present temporarily residing in this town.

Both appearing parties take part in this act of their own accord and right, and in addition Mr. Montelibano grants to his wife, Doña Liceria Montelibano, the marital permission provided by law, which was requested by the latter and thereupon granted by the former.

And having, as they do, the necessary legal status for the execution of this document, they freely and spontaneously set forth:

That on the 25th day of October of the present year, nineteen hundred and five, Don Luis G. Espoy and Don Alejandro Montelibano y Ramos, the former as representative in this town of the Compañia General de Tabacos de Filipinas, and the latter in his own behalf, both executed a contract, the literal contents of which are as follows:

"In the city of Iloilo, October 25, 1905, Don Luis G. Espoy, as representative of the Compañia General de Tabacos de Filipinas established at Iloilo, as party of the first part, and Don Alejandro Montelibano y Ramos, in his own behalf, as party of the second part, agree and covenant as follows:

"First, Don Luis G. Espoy, as representative of the Compañia General de Tabacos de Filipinas, delivers to Don Alejandro Montelibano for the purpose of collection, under the conditions hereinafter expressed, the following credits:

Cresenciano Gonzaga, one thousand one hundred and fifty pesos and one centavo. José Ereñeta, nine thousand nine hundred and twenty-six pesos and sixty-four centavos. Mateo Hernaes, two thousand seven hundred and fifteen pesos and eighty-six centavos. Quirino Gamboa, six thousand one hundred and seventy-eight pesos and ten centavos. Inocentes de la Rama, seven thousand six hundred and eighty-four pesos and seventy-three centavos. Luciano Aguirre, fourteen thousand two hundred and fifty-four pesos and fifty-seven centavos. Domiciano Gonzaga, two thousand and one pesos and ninety-six centavos. Emilio Escay, twenty-nine thousand eight hundred and twenty-four pesos and forty-three centavos. Roque Benedicto Garbanzos, one thousand and twenty-five pesos and six centavos. José C. Mijares, four thousand one hundred and thirty-two pesos and forty-eight centavos. Mariano Lopez, five thousand twenty-two pesos and six centavos. Basilio Mahinay, six thousand and fifty-nine pesos and three centavos. Silverio Conlú, eight hundred and seventy-three pesos and twenty-eight centavos. Demetrio Gamboa, two hundred and seventy pesos and sixty-six centavos. Toribio Gales, fifty-two pesos and ninety-three centavos. Santiago Reyes, twenty-four pesos and forty-five centavos. Alfonso Santa Ana, four hundred and ninety-six pesos and fifty-seven centavos. Maximino Lopez, six hundred and eighty-four pesos and ninety-seven centavos. Cresenciano Araneta, one thousand five hundred and three pesos and eighty-six centavos. Roman Novella, fourteen pesos and thirty-two centavos. Eduardo Santa Ana, five thousand eight hundred and seventeen pesos and twenty-seven centavos. Vicente M. Conlú, four hundred and thirty-six pesos and twenty centavos. Generoso Gamboa, four hundred and fifty-seven pesos and four centavos. Felix Loesin, one hundred and five pesos and seventy-two centavos. Domingo Hernaez, eleven thou-

sand one hundred and eighty-one peso and five centavos. Rosendo Hernaez, five thousand seven hundred and fifty pesos and one centavo. Celso Jover y Compañia, two thousand and thirty-seven pesos and seventy-two centavos. Vicente Araneta, nine hundred and forty-five pesos and sixty-three centavos. Agent at Silay, according to signed statement, twenty-eight thousand nine hundred and thirty-five pesos and thirty-five centavos. Gonzalo Hofileña, eighty-six pesos and ninety-six centavos. Isidro Villanueva, seven hundred and four pesos and seventy centavos. Pedro Yulo, one thousand and thirty-five pesos and forty-nine centavos. Marcelino Ascona, one thousand seven hundred and seventy-one pesos and eighty-eight centavos. Gonzalo Diching, thirty-three pesos and forty-one centavos. Francisco Sajo, three hundred and seventy-seven pesos and sixty-eight centavos. Felix Arceo, three thousand one hundred and one pesos and thirty-seven centavos. Ponciano Maravilla, eleven pesos and forty-four centavos. Agustin Moyco, seven thousand three hundred and thirty-eight pesos and fifty-eight centavos. Celso Hofileña, seven hundred and thirty-three pesos and thirty-five centavos. Gregorio Sajo, six thousand five hundred and thirty-three pesos and seventy-nine centavos. Benedicto Magallanes, eight hundred and nineteen pesos and seventy-three centavos. Agent at Sarabia, according to signed statement, six thousand two hundred and forty-one pesos and fifty-two centavos. Miguel Ascona eight hundred and forty-six pesos and ninety centavos. Total, one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos.

Second. After a careful examination of all the credits, Don Alejandro Montelibano stated that the total amount of the credits was one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos, as heretofore stated. The company guarantees the existence and legitimacy of the credits mentioned, but in no case will it guarantee the solvency of the debtors.

Third. Don Alejandro Montelibano obligates himself to pay to the Compañia General de Tabacos de Filipinas at Iloilo, as the value of the credits set forth in detail in the first paragraph, the sum of one hundred and thirty thousand pesos current legal tender in the following manner: In the month of December of 13 nineteen hundred and six, twenty thousand pesos. In the month of December, nineteen hundred and seven, twenty thousand pesos. In the month of December, nineteen hundred and eight, twenty thousand pesos. In the month of December, nineteen hundred and nine, twenty thousand pesos. In the month of December, nineteen hundred and ten, fifty thousand pesos.

Fourth. The Compañia General de Tabacos de Filipinas grants to Don Alejandro Montelibano thirty days from the date provided to pay the second and third, fourth and fifth instalments, and in case the company extends the day of payment of each one of the instalments to the month of March corresponding to each year provided, Don Alejandro Montelibano obligates himself to deliver during each one of the harvests of the years nineteen hundred and seven to nineteen hundred and ten, both inclusive, five thousand

piculs of sugar, to be sold by the company or purchased by it at the same price, Don Alejandro Montelibano to pay as commission for selling the same one per cent of the gross price of said sugar, and there will also be charged to the account of said party all other incidental and customary expenses.

Both contracting parties agreed that if Don Alejandro Montelibano should pay at the times provided the one hundred and thirty thousand pesos, all the credits and documents of the debtors which are now delivered to him as specifically set out in paragraph one, will be transferred to him, and consequently Don Alejandro Montelibano agreed to pay in cash to the Compañia General de Tabacos de Filipinas in the instalments set out the sum of one hundred and thirty thousand pesos, in order to acquire the ownership of the rest of the credits.

Fifth. The payment of the first four instalments must be made in cash, but the fifth instalment, in case Mr. Montelibano may not have been able to collect sufficient cash to complete the sum of one hundred and thirty thousand pesos, will be considered paid by the delivery by Mr. Montelibano of all the documents of the credits that he may have been unable to collect, without any exception, and which will be received at their face value, which together with the amounts delivered in cash should aggregate the sum of one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos, without including interest on any of the credits from the 30th of June, nineteen hundred and five, and consequently, in case the fifth instalment is paid in credits, the eighty thousand pesos paid in cash will be made up by credits, without interest, sufficient to complete the sum of one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos, the total amount of the credits.

Sixth. All the cancellations of the credits expressed, whether by payment or transactions, will be made by the Compañia General de Tabacos de Filipinas on the proposal of Don Alejandro Montelibano, the latter, however, being authorized to issue partial receipts for whatever sums he may collect.

Seventh. The interest that may be paid or earned by the debtors on the credits expressed until the respective day of payment of each one of them will not be included in the payment of the one hundred and thirty thousand pesos, this sum to be paid solely from the capital of the credits, and the Compañia General de Tabacos de Filipinas will renounce in favor of Mr. Montelibano the interest that may have been earned by all the credits mentioned from June, nineteen hundred and five, but only in case Mr. Montelibano shall have paid in cash in the instalments provided the one hundred and thirty thousand pesos, it being understood that both parties covenant that when the eighty thousand pesos making up the four instalments have been paid, Mr. Montelibano will return the balance of ninety-nine thousand one hundred and seventy-seven pesos and eighty-six centavos and will deliver also the interest that he may have received.

Eighth. The Compañia General de Tabacos de Filipinas will not

advance to Don Alejandro Montelibano any sum whatever for use in the collection of the credits mentioned in the first paragraph. The company accepts no responsibility for whatever actions may be instituted by Mr. Montelibano for the collection of said credits, said party accepting whatever responsibilities may arise by reason of his negotiations.

Don Luis G. Espoy, in behalf of the Compañía General de Tabacos de Filipinas, by the present confers upon Don Alejandro Montelibano authority to conduct under his own responsibility all the negotiations he may deem requisite for the collection of the credits mentioned; and in the event of any judicial action being instituted, the company shall sell to Mr. Montelibano the credit which is the object of such litigation.

16 Don Alejandro Montelibano makes known that he has examined to his satisfaction all the documents, writings and contracts evidencing the aforesaid credits, with which he is in conformity, and accepts them without any reservation whatever, in all cases exempting the Compañía General de Tabacos de Filipinas from perfecting said documents, Mr. Montelibano on his part obligating himself to procure, at his expense, the renewal of all the documents in the form that may best suit the interests of the company, always with the distinct condition of improving, whenever it is possible, the guarantees of each one of the credits, and in no case to diminish them or reform them without the express authority of the Compañía General de Tabacos de Filipinas.

In the event of the death of Don Alejandro Montelibano during the term of the present contract, this agreement will be understood to be transferred to his heirs under the same conditions upon which it is made with him, but said heirs may rescind the same by declaring within sixty days after said death occurs their intention not to continue the conditions agreed upon in this deed. If the heirs of Mr. Montelibano should request the rescission of the present contract in the stipulated period of sixty days, they must present in said period a claim of all the credits pending and return all the documents and writings, which will be received by the company upon the same conditions as those stipulated for the payment of the fifth instalment in case the latter is not made in cash. If the death should occur within the first, second, third or fourth days of payment, the amount due for the months of the instalment that have expired will be computed proportionately, which amount shall be paid by the heirs.

17 In the event that after the payment of the fourth instalment, that is to say, after a total of eighty thousand pesos has been paid, it should appear that the sum of the cancellations and collections does not cover said amount, the excess will be understood to be advanced by Mr. Montelibano, and the interest on this excess will be credited to Mr. Montelibano, as well as a participation in the credits returned equal to the excess. Both parties agree that the sum named in each instrument as a fine against the debtor in case of litigation for costs and attorneys' fees will be considered to be in favor of Mr. Montelibano (as well as a participation in the credits)

in order to take care of the expenses incurred by him by his judicial proceedings.

In the event that Mr. Montelibano, in the month of June, nineteen hundred and six, should request that the present contract be altered by inserting therein a firm promise on his part to pay in cash the one hundred and thirty thousand pesos stipulated to be made in five instalments, without any obligation upon the company to receive any document of credit, the chief of the Iloilo house is entitled to propose to the Main Office of the Company in Manila the concession of a credit of thirty thousand pesos to Mr. Montelibano to be used for the purpose of buying sugar and delivering it in Iloilo to the company under the usual conditions obtaining there.

As security for the present contract, Don Alejandro Montelibano specially and specifically mortgages the following properties belonging to Doña Liceria Montelibano, to-wit: A house in Silay assessed at thirty-four thousand pesos and which shall be liable for this sum. A house in Silay (details to be furnished for the purpose of registration) which shall be liable for the sum of twelve thousand pesos.

The contracting parties sign in conformity with what is agreed upon in the present contract, with the reservation of submitting the same to the main office of the Compañia General de Tabacos de Filipinas in Manila. Iloilo, twenty-fifth of October of nineteen hundred and five. A. Montelibano. Rubricated. Compañia General de Tabacos de Filipinas. The Chief of the Iloilo House, Luis G. Espoy. Rubricated."

Such is the document executed by Don Alejandro Montelibano and Don Luis G. Espoy on the 25th of October of the present year, in which the said company ceded to the said Mr. Montelibano all the credits set forth in the same to the end that the cessionary might carry into effect the collection from all the debtors of the company of the debts set forth in the inserted document, the total amount of which aggregates the sum of one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos, by means of the authority conferred by said company upon said Mr. Montelibano to enable him to carry out upon his own responsibility all the negotiations he might deem necessary for the collection of the credits mentioned, and that in the event of any judicial action being instituted the company would cede in sale to Mr. Montelibano the credit which was the object of said litigation.

Don Alejandro Montelibano obligated himself to pay to the Compañia General de Tabacos de Filipinas as the value of the credits set forth in that document the sum of one hundred and thirty thousand pesos in current legal tender in the manner set forth in the indicated document, with the other covenants and conditions.

And for the security of that contract Don Alejandro Montelibano specially and specifically mortgages the properties belonging to his wife, Doña Liceria Montelibano, which are as follows:

A piece of land situated on Calle Real of the pueblo of Silay,

Occidental District of the Island of Negros, which has a square superficial extension measuring forty-six brazas (fathoms) on each side, forming a square, bounded on the north by the property of Hilario Guanzon, on the south by a highway running to the cemetery, on the east by another street, and on the west by Calle Real, which lot Doña Liceria Montelibano acquired by purchase made by her from Don Emeterio Montelibano y Guanzon in the year eighteen hundred and ninety-five before the former notary of this province, Don Andres Pastor Santana. Upon said lot are located two houses of strong materials, measuring, the one forty-six brazas (fathoms) in front and eight and one-half brazas (fathoms) in depth, and the other twenty brazas (fathoms) in front and eight brazas (fathoms) in depth. A precautionary notation of that instrument was entered in the Registry of Property of Bacolod, in the absence of ancient notarial registers, in Provisional Volume

20 11 of Silay, folio twenty and over. Annotation letter A, property No. 36, on the 19th of June of said year 1905; and entries as to the consummation of the contract of sale were made in Provisional Volume 1 of Silay, folios 20 and over and 22, properties Nos. 37 and 158, annotation letters C and B, respectively, on the 4th of April, 1896, by the former registrar of Bacolod, Don Rustibiano Herreros.

The properties described, that is to say, the houses and lot, are free from all liens and liability, according to assurance given by the interested party, the total value being P46,000.

That by virtue of the aforesaid document dated the 25th of October of the present year, the aforesaid Doña Liceria Montelibano ratifies the mortgage constituted by her husband, Don Alejandro Montelibano, upon the properties described, leaving subsisting in full force from this date the mortgage upon the aforesaid properties in favor of the Compañia General de Tabacos de Filipinas.

Doña Liceria Montelibano authorizes the aforesaid company, in case of the nonfulfillment by her husband of all that is stipulated in said instrument of obligation, to proceed judicially or privately, as it deems desirable, against the properties mortgaged, she waiving from this time whatever action may hinder the proceedings which said company might institute, which waiver she makes of her own spontaneous will, without violence or compulsion on the part of any other person or her husband, in consideration of the inducements offered by the Tabacalera Company in favor of the executing parties.

21 Don Alejandro Montelibano obligates himself to perfect the title of ownership of the described lot with the buildings existing thereon, and will deliver to the company in exchange for the instrument of sale heretofore mentioned the new definitive title.

There is present at this act Don Luis G. Espoy y Machado, married, of age, of this town, in his capacity of representative in this town of the Compañia General de Tabacos de Filipinas, by virtue of the powers conferred in his favor by Don José Rosales Bustillo on the 29th of April of last year, which powers are at present in force

and have not been revoked, suspended, or limited, and being duly informed of the terms stated in the present instrument, he accepts it.

In witness whereof they signed the present in Iloilo on the tenth of November, nineteen hundred and five, A. D.

MONTELIBANO.

LICERIA DE MONTELIBANO.

COMPANIA GENERAL DE TABACOS DE
FILIPINAS,

The Chief of the Iloilo House,
LUIS G. ESPOY.

Signed in the presence of—

GERARDO HERVAS.

MLO. D. CARRISO.

There are thirteen documentary stamps of the value of P10.20.

THE UNITED STATES OF AMERICA,

Philippine Islands, Province of Iloilo:

In the Municipality of Iloilo, of the province of Iloilo, this 10th day of November, 1905, A. D. Before me appeared personally the aforementioned Doña Liceria Montelibano, assisted by her husband, Don Alejandro Montelibano, and Don Luis G. Espoy, to which I certify; whom I know to be the same persons who executed and subscribed the foregoing document, and ratified the same as an act of their free will and execution; having exhibited to me their
22 personal certificates of registration, that of the first gentleman bearing No. 431,428, issued by the Municipal Treasury of Bacolod, Negros Occidental, on the 27th of January, and that of the second gentleman bearing No. 32,190, issued by the Municipal Treasury of this city on the 2nd of February, both of the present year.

Before me.

(Signed)

Licentiate GREGORIO YULO,

Notary Public.

My commission expires December 31st, 1906.

There is a 20 centavo stamp and a notarial seal.

The foregoing document was inscribed, as regards the credits against Quirino Gamboa and Basilio Mahinay, the only ones as to whom the inscription was requested, in stub-book No. 3 of the municipality of Silay, folios 236 and over, 244 and 248, properties Nos. 183, 184, 185 and 186, respectively, fourth inscriptions; in volume 2, provincial form No. 80, page 54, property No. 182, of said municipality of Silay, inscription 4th, and in volume 8, provincial form No. 80, pages 21, 29, 37 and 43, properties Nos. 49, 50, 51 and 52, of the municipality of Sarabia, 3rd inscriptions; and the inscription with respect to the house of mixed materials, with

its corresponding lot, was suspended by reason of its ownership not having been heretofore registered in the name of the debtor or of any other person, but meanwhile precautionary annotation of the same was made on page 173 of volume 3, provincial form No. 80, property No. 315, of the municipality of Silay, precautionary annotation letter B, Bacolod, 10th of July, 1907.

(Signed)

L. AINECUARG,

Acting Register of Deeds, Province of Occidental Negros.

Fees, P4.35, Nos. 2 and Tariff.

23 The preceding document was recorded with reference to the credit due from José de Mijares, the only inscription requested, at the pages, I say, pages 247 and 67 of volumes 1 and 3, respectively, provincial form No. 80, of the municipality of Talisay, properties Nos. 242 and 243, 4th inscriptions.

Bacolod, 26th of September, one thousand nine hundred and seven.

(Signed)

L. AINECUARG,

Acting Register of Deeds, Province of Occidental Negros.

There is a seal of the office of the Registry of the Province of Occidental Negros.

EXHIBIT "B."

We, the Compañia General de Tabacos de Filipinas, represented by Don Carlos A. Ferrandiz, as agent of the same, of age, married, a resident of the municipality of Iloilo, Iloilo, P. I., of the one part; and of the other, Don Alejandro Montelibano y Ramos, married, of age, a resident of the municipality of Silay, Province of Occidental Negros, together with his wife, Doña Liceria Montelibano, also of age, with the same residence, have agreed to execute the present document, to the fulfillment of which we obligate ourselves, under the following clauses and conditions:

First. Whereas, Don Alejandro Montelibano y Ramos, by virtue of the instrument executed by him and by the Compañia General de Tabacos de Filipinas on the 25th of October, 1905, received for collection various credits in favor of the Compañia General de Tabacos amounting in all to the sum of One hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos (P179,177.86); and obligated himself to deliver to the

24 Compañia General de Tabacos de Iloilo the sum of One hundred and thirty thousand pesos (P130,000.00) in the following form: In the month of December, 1906, twenty thousand pesos (P20,000.00); in the month of December, 1907, twenty thousand pesos (P20,000.00); in the month of December, 1908, twenty thousand pesos (P20,000.00); in the month of December, 1909, twenty thousand pesos (P20,000.00); in the month of December, 1910, fifty thousand pesos (P50,000.00).

Second. Whereas, in the instrument stated it was set forth and

specially covenanted that Don Alejandro Montelibano y Ramos is under the obligation to deliver in cash to the Compañía General de Tabacos the sum of eighty thousand pesos (P80,000.00) on the dates mentioned, that is, in December, 1906, twenty thousand pesos (P20,000.00); in December, 1907, twenty thousand pesos (P20,000.00); in December, 1908, twenty thousand pesos (P20,000.00); in December 1909, another twenty thousand pesos (P20,000.00); these four instalments making a total of eighty thousand pesos (P80,000.00) that he must necessarily pay in cash; and whereas there is also set forth in said instrument the condition that if, in addition to having delivered the eighty thousand pesos (P80,000.00) in cash, said Mr. Montelibano delivers on the last date of payment, that is, in the month of December, 1910, the sum of fifty thousand pesos (P50,000.00) in cash, the Compañía General de Tabacos will renounce in favor of Mr. Montelibano the interest that may have been earned on the total of the credits mentioned, one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos (P179,177.86) from the month of June, 1905; and whereas it has been equally stipulated in

25 said instrument that if, after having delivered in four instalments the sum of eighty thousand pesos (P80,000.00) in cash, Mr. Montelibano should be unable to deliver to the Compañía General de Tabacos the sum of fifty thousand pesos (P50,000.00) in cash in the month of December, 1910, said Mr. Montelibano should return the remainder of the credits not collected, the amount of which, added to the eighty thousand pesos (P80,000.00) already paid, must aggregate not less than one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos (P179,177.86), together with the interest in cash on the total amount which may have been earned by all the credits by him received; and

Third. Whereas, it has also been agreed in said instrument that Mr. Montelibano in his negotiations for the collection of the credits in favor of the company by him received may not in any manner depreciate, diminish or reduce the value of each mortgage guaranty executed by each debtor in favor of the Compañía General de Tabacos in the documents of credit, but on the contrary, said Mr. Montelibano remains obligated to better the same, in order that said mortgage or pignorative guarantees may secure in an effective manner the payment of the credits upon which they have been constituted; and whereas it has also been stipulated in said instrument that Mr. Alejandro Montelibano y Ramos can acquire the ownership of said credits delivered to him by the Compañía General de Tabacos only when he shall have delivered to said Compañía General de Tabacos in cash, and in no other way, the total sum of

26 the amounts specified in the five instalments, that is to say, the amount of one hundred and thirty thousand pesos (P130,000.00); and

Fourth. Whereas, for the security and exact fulfillment of the obligation of Mr. Montelibano to deliver to the Compañía General de Tabacos the sum of eighty thousand pesos (P80,000.00) in cash,

corresponding to the first four instalments; and, for the security of the exact fulfillment of his further obligations set forth in the other conditions expressed in said instrument of the 25th of October, 1905, said Mr. Montelibano, together with his wife, Doña Liceria Montelibano, mortgaged in favor of the Compañia General de Tabacos the properties described in the instrument signed by both spouse on the 10th of November, 1905.

Fifth. Whereas, Don Alejandro Montelibano y Ramos, having paid the first instalment of twenty thousand pesos (P20,000.00), corresponding to the month of December, 1906, long after it was due, said payment not having been made until the 11th day of October, 1907; and whereas said Mr. Montelibano has not paid the second instalment of twenty thousand pesos (P20,000.00), corresponding to the month of December, 1907, with the exception of the sum of seven hundred and thirty-six pesos and ninety-five centavos (P735.95), the date of payment of the second instalment having already more than expired; and whereas Mr. Montelibano now requests of the Compañia General de Tabacos de Filipinas the extension of the date of payment of this second instalment until the month of March, 1909, first making payment of five hundred pesos (P500.00) as compensation for this extension of the unpaid
27 remainder of this second instalment from the month of March, 1908, until the total payment of the same, which will be March, 1909; and,

Sixth. Whereas, said Mr. Alejandro Montelibano y Ramos obligates himself anew to pay the third instalment with all punctuality in the month of March, 1909, which amounts to the sum of twenty thousand pesos (P20,000.00); and whereas the Compañia General de Tabacos is disposed to concede to said Mr. Montelibano the extension of the second and third payments as requested by him.

Therefore, I, Alejandro Montelibano y Ramos, together with my wife, Liceria Montelibano, parties of the second part of this contract, in consideration of all that is heretofore set forth and the extension by me requested, obligate myself with all exactitude and punctuality to the payment of the five instalments herein mentioned and more especially the second and third instalments, corresponding to December, 1907, and December, 1908, both extended until March, 1909; and in order to secure the faithful fulfillment of my obligations, I ratify jointly with my wife the mortgage executed and constituted in favor of the Compañia General de Tabacos upon the properties described in said instrument of the 10th of November, 1905, signed by us, and which is an integral part of the present instrument, and further obligate myself as follows:

To neither depreciate nor diminish in any manner the guarantees of the debtors of the credits of the Compañia General de Tabacos by me received, but on the contrary in the transactions and re-
28 newals of documents that I may be able to celebrate with said debtors, I acknowledge myself to be obligated to improve the guarantees in the form expressed in the third clause; and I ratify furthermore my obligation of not being allowed to acquire as my property the properties that guaranteed or guarantee said credits by me

received, or those that may be adjudicated to me in any transactions or litigation until such time as I shall have delivered to the Compañia General de Tabacos in cash the total amount expressed in the five instalments already mentioned; and for the purpose of responding to the fulfillment of what is covenanted, I increase my former guarantees, constituting in favor of the Compañia General de Tabacos in a special manner a mortgage upon the hacienda "Santa Catalina" or "Bagacay," belonging to me exclusively, free of all lien and incumbrance, the location and boundaries of which are as follows: Rural property, consisting of a hacienda called "Santa Catalina" or "Bagacay," situated in the place known by the latter name, jurisdiction of the municipality of Talisay, before Minuluan, Province of Occidental Negros, Philippine Islands, which contains a superficial area of two hundred and twelve (212) hectares and sixty (60) ares, the limits of which are, on the north, the river Macalaca, the river or rivulet of the same name and the lands of Fabian Lamayo, Fermín Sison Ledesma; on the east, the river Bagacay and other lands of Simeón Ledesma, those of Celestino Dalinchos and Francisco Santillana; on the south, the lands of

29 Ambrosio Lamig and the river Catabla; and on the west, the same river Catabla; together with all improvements, structures, machinery, furnaces, fields of sugar cane at present existing and which may exist in future, so long as this obligation may subsist, and all the other appurtenances of said property, and thirty-two (32) carabaos and twenty-five (25) cattle, whose classes, marks and other distinguishing signs are not described in this instrument by reason of my not having the certificates of ownership of the same at hand; I remaining obligated to correct this equity and to fulfill as promptly as possible whatever is required in connection therewith by the "Chattel Mortgage Law, No. 1508," describing said live stock in a new additional instrument, which I will execute separately, delivering to the creditor company the indicated certificates of ownership. I also promise to deliver in full to the Compañia General de Tabacos whatever product is for sale from the house and hacienda which belonged to the deceased Don Emilio Escay, and which he mortgaged to the company to secure his account, the situation, description and boundaries of which are set forth in the documents received by me when the credits already mentioned were delivered to me; and any other receipts that may be obtained by the collection of credits, if on the completion of said sale or receipts the third instalment may not have been paid, which payment is to be made next March. And to the end that the present instrument may be recorded in the Registry of Property, I obligate myself under the specified guarantees to execute an additional instrument as soon as possible in favor of the Compañia General de

30 Tabacos, in which there will be set forth the situation, description and boundaries of said house and hacienda of the deceased Don Emilio Escay.

And lastly, ratifying all the obligations that I contracted in the instrument of the 25th of October, 1905, I also set forth that before proceeding to the sale of any of the credits ceded or of the guar-

antees of the same, I will request the due conformity of the Compañia General de Tabacos.

I, Carlos A. Ferrandiz, in the aforesaid representation claimed by me, party of the first part to this contract, accept in all their parts the terms and conditions that are set forth in this document.

In witness whereof, we sign the present contract, which is of one purport and to one effect, in Iloilo, on the 7th of December, nineteen hundred and eight, A. D.

(Signed)

C. A. FERRANDIZ.

(Signed)

A. MONTELIBANO.

Signed in the presence of:

DIONISIO RESOL.

(Signed)

RUPERTO GILBA.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the municipality of Iloilo, Province of Iloilo, on the 7th day of December, 1908, A. D., there appeared before me Messrs. Carlos A. Ferrandiz, as agent of the Compañia General de Tabacos de Filipinas, and Alejandro Montelibano y Ramos, whom I certify to be known to me and to be the persons who executed the foregoing instrument, and ratified the same as an act of their own free will and execution. The former exhibited his certificate of registration No.

F723059, issued at Iloilo on January 14, 1908, and the latter No. F233731, issued at Silay, Occidental Negros, on January 6, 1908.

Before me.

(Signed)

JOSÉ ATADERO.

Notary Public.

I, Liceria Montelibano, of age, married to Alejandro Montelibano y Ramos, hereby declare: That I am one of the parties who executed the abovementioned contract signed by Don Carlos A. Ferrandiz and by my husband, Don Alejandro Montelibano y Ramos, at Iloilo, and that not being able to sign said instrument together with Mr. Ferrandiz and my husband, Mr. Montelibano, by reason of being in the municipality of Silay, Occidental Negros, I hereby sign it, ratifying everything set out, covenanted or stipulated in said contracts, and all obligations which were stipulated or covenanted referring to me, and to the exact and faithful fulfillment thereof I hereby obligate myself in the most appropriate legal way.

In witness whereof I sign these presents in the municipality of Silay, Occidental Negros, on this — day of December, 1908, A. D.

— —
— —

Signed in the presence of:

— —

THE UNITED STATES OF AMERICA,

Philippine Islands,

Province of Occidental Negros:

In the municipality of Silay, in the Province of Occidental Negros, on the — day of December, 1908, A. D., there appeared before me Doña Liceria Montelibano, whom I certify to be known to me to be the person who executed the foregoing document, and
 32 ratified the same as an act of her own free will and execution. The appearing party did not exhibit certificate of registration, on account of being exempt therefrom.

Before me,

(Heading and Title Omitted.)

Messrs. O'Brien & De Witt, Attorneys for Plaintiff:

You are hereby notified that on Saturday, the 22nd of the present month, at 8 o'clock a. m. or as soon as possible thereafter as they can be heard, the attorneys for the defendant company will ask from the Court of First Instance for the District of Manila in the Branch presided over by the Honorable Simplicio del Rosario the appointment of a receiver in accordance with the request contained in the cross-complaint filed by the defendant.

Manila, P. I., July 18, 1911.

(Signed) BRUCE, LAWRENCE, ROSS & BLOCK,
Attorneys for Defendant, Plaza Moraga No. 15, Manila.

Received copy this — day of July, 1911.

Attorneys for Plaintiffs.

On the 15th day of February, 1912, the plaintiffs and appellants presented the following answer to the cross-complaint of the company defendant and appellee:

33 (Heading and Title Omitted.)

Come now the plaintiffs in this cause and, replying to the cross-complaint of the defendant, as first defense, allege:

1. That the Court of First Instance of Manila has no jurisdiction over the action instituted by the cross-complaint, unless the defendant renounces the right it may have, by virtue of the contract "Exhibit A" attached to the cross-complaint, to the real estate of the plaintiff Liceria Montelibano, situated in the Province of Occidental Negros.

As second defense to the cross-complaint the plaintiffs allege that:

1. They admit the allegations contained in the first, second and third paragraphs of the same.

2. They deny all of the allegations contained in the fourth para-

graph of the cross-complaint and especially the execution of the document marked "Exhibit B" attached to the same.

3. They deny all the allegations contained in the seventh, eighth, ninth, tenth, eleventh and twelfth paragraphs of the cross-complaint.

4. They deny all the allegations contained in the fifth paragraph of the counterclaim, but admit that the defendant delivered to the plaintiff Alejandro Montelibano certain documents, some duly evidencing and others indicating the credits mentioned.

5. Answering the allegations of the sixth paragraph of the cross-complaint, the plaintiffs allege that the payment of the P20,736.95 mentioned was made in fulfillment of the dispositions of the contract dated the 10th of November, 1905, attached to the cross-complaint as "Exhibit A."

As third defense to the cross-complaint the plaintiffs allege:

1. That the plaintiffs never have declined and do not now decline to fulfill their part of the obligations contracted by the contract, copy of which is attached to the cross-complaint as "Exhibit A"; that the plaintiffs have offered and offer to pay to the defendant, in addition to the sum of P20,736.95 already paid, the sum of P51,525.05, which sums, together with the sum of P7,738.00, in which amount the credit of Escay was reduced by the Supreme Court, aggregate the sum of P80,000.00, and to hand back to the defendant credits and parts of credits of those mentioned in the cross-complaint to the value of P99,177.86, and to return to it the corresponding documents received, but that the defendant has refused to accept same.

Manila, P. I., February 15, 1912.

Attorneys for Plaintiffs, 103 Anloague, Manila.

THE UNITED STATES OF AMERICA,

Philippine Islands, City of Manila:

Alejandro Montelibano under oath declares that he is one of the plaintiffs in the above-entitled cause; that he is informed of the contents of the answer to the cross-complaint preceding, and that said contents are true according to his best knowledge and belief.

(Signed)

ALEJANDRO MONTELIBANO.

35 Subscribed and sworn to before me this 15th day of February, 1912. Exponent exhibited to me his personal cedula No. F654200, issued in the Province of Occidental Negros on the 12th of January, 1912.

(Signed)

[NOTARIAL SEAL.]

W. L. WRIGHT,
Notary Public.

My commission expires December 31, 1912. Notarial No. 118, page 25, Book I.

Received copy this — day of February, 1912.

On the 14th day of August, 1912, the company defendant and appellee presented the following motion requesting permission to amend its cross-complaint:

(Heading and Title Omitted.)

Motion by the Defendant Requesting Permission to Amend Its Cross-Complaint.

Comes now the defendant company in the above-entitled cause, by its undersigned attorneys, and respectfully asks the Court for permission to amend paragraph IX of its cross-complaint in said cause presented in order that the same may read as follows:

"IX.

"That the defendant is informed, and believes, and, therefore, alleges, that the aforementioned plaintiff, Alejandro Montelibano y Ramos, has collected and has in his possession considerable sums in cash, collected on account of the credits belonging to the defendant, heretofore described in the aforesaid contracts, and likewise
36 has in his possession various properties, both real and personal, mortgaged or in some other manner serving as guaranty of the credits delivered, as has already been stated to the plaintiff by the defendant, and other property that has come into the possession of the plaintiff in the course of judicial proceedings instituted, and by virtue of transactions carried out by the plaintiff, for the purpose of carrying out the collection of the credits by the defendant delivered to the plaintiff under the aforesaid contracts, and that notwithstanding the dispositions of the aforementioned contract 'Exhibit B' to the effect that if the said plaintiff should neglect to pay to the defendant the amount which would be due in March, 1909, the plaintiff would be obliged to pay to the defendant whatever sums he might have received and also return all credits which remained uncollected, and further with infraction of the express stipulations of the aforesaid contract to the effect that the plaintiff should not acquire any of the properties mortgaged as security, either of the credits already received by him or of those that might be adjudicated to him in the course of judicial proceedings or by virtue of transactions, until he had paid to the defendant the total sum of all the amounts earned and exigible, in accordance with the terms of the aforesaid contract, the aforementioned plaintiff, Alejandro Montelibano y Ramos, with infraction of his aforesaid contracts and with intent to defraud the defendant, has failed and refused to pay or render account of any of the sums by him collected, except in the manner already indicated above, and has failed and refused and now fails and refuses to deliver to the
37 defendant or to the receiver appointed by this Court, the property that has come into his possession by virtue of judicial proceedings or of transactions, in accordance with what has already been said, but, on the contrary, has retained in his possession and has appropriated to himself such sums and property."

That the supplication of the defendant in question may be amended by adding thereto the following, to-wit:

"That if, when an account has been rendered and the facts investigated, it should appear that property has come into the possession of the plaintiff by reason of the facts set forth in the present writing, said plaintiff be ordered to transfer and deliver said property to the defendant, and orders issued for the cancellation of whatever entries may appear in the registry of property by virtue of which there may have been procured or solicited the inscription in the name of the plaintiff or of his agents of the ownership of whatever real estate may have been acquired in the manner indicated.

"That the plaintiff be ordered to deliver to the defendant the original of the document 'Exhibit B' in order that the same may be inscribed in the registry of property."

(Signed) BRUCE, LAWRENCE, ROSS & BLOCK,
By JAMES ROSS,

Attorneys for Defendant.

Mr. W. J. Rohde, Attorney for Plaintiff:

You are hereby notified that on Saturday, the 17th of the present month and year, at eight o'clock in the morning, or as soon thereafter as the undersigned attorneys can be heard, the
38 preinserted motion will be submitted to the Court of First Instance for its resolution.

Manila, P. I., August 14, 1912.

(Signed) BRUCE, LAWRENCE, ROSS & BLOCK,
By JAMES ROSS,

Attorneys for Defendant, Plaza Moraga No. 15, Manila.

Received copy:

Attorney for Plaintiff.

The amendments to the cross-complaint of the defendant company having been allowed, the trial of this cause was held, during which the parties presented their respective testimony.

On the 18th of February, 1913, the Hon. Judge Crossfield handed down his decision, which is as follows:

(Heading and Title Omitted.)

This case is before the court for trial upon the answer of defendant asking for affirmative relief and damages, for an accounting by the plaintiff, and for judgment for the amount found to be due upon the accounting, and for the appointment of a receiver pending the final determination of the action.

The plaintiff desisted from his complaint by pleading filed under date of March 1, 1912, and asked for a dismissal of the action, which motion to dismiss was denied on March 22, 1912.

Mr. W. J. Rohde appeared for the plaintiff; Mr. James Ross for the defendant.

39 From the evidence presented at the trial I find that on October 25, 1905, the plaintiff and the defendant, through its legal representative at Iloilo, entered into a contract, which was ratified and extended in a public document on November 10, 1905, whereby the defendant turned over to the plaintiff claims against defendant's creditors, for collection as set forth in the document, to the amount of P179,177.86, with the agreement that if the plaintiff should pay the defendant in December of each of the years 1906, 1907, 1908, and 1909 the sum of P20,000, and P50,000 in December, 1910, the defendant would then sell, transfer, and deliver to the plaintiff the whole remaining of said claims.

There were some conditions in the contract which provided for some slight extensions of time and the manner of payment, but inasmuch as it does not appear that any payment was ever made within the time stated these conditions need not be considered.

In October, 1907, the plaintiff paid defendant the sum of P20,000, being the amount which was due in December, 1906, and subsequently paid the defendant the sum of P736.95.

That when the original contract was ratified, as before stated on November 10, 1905, the plaintiff's wife joined her husband in the contract and between them they executed some security for the fulfillment of the contract.

That on December 7, 1908, the plaintiff being in default of payment, a new contract was drawn for all the parties appearing in the contract of November 10, 1905, and this new contract was fully executed and delivered as between the plaintiff and the defendant, but it never was signed or in any manner executed or
40 delivered by the plaintiff's wife.

That after its delivery the contract in the possession of the defendant was delivered by defendant to the plaintiff for the purpose of taking it from Iloilo to plaintiff's home on the Island of Negros for the purpose of having it signed and executed by his wife and then to have it recorded in the registry of property inasmuch as it contained a mortgage upon property located in that province, but it appears that the plaintiff's wife refused to sign and execute the document.

In consideration of some concessions made by the defendant in this contract executed between the parties to this action, as before stated, the plaintiff was prohibited, among other things, from and agreed not to in any manner permit the securities upon the claims which had been transferred to him to diminish in value, but to improve all the guarantees in any transaction which he had in relation to the said claims, and obligated himself not to acquire any of the property which then guaranteed or which would thereafter be given in guarantee of the payment of any of the said credits until the full amount agreed upon as payment for the said credits had been delivered to the defendant.

Under the conditions of this contract the former security given for its performance remained as before. The additional security

provided for in the new contract which the plaintiff's wife was required to sign failed because of her refusal to execute the contract.

By order of this court made during the pendency of the action the plaintiff rendered some sort of an accounting, which, however, does not appear to include all of the credits which were delivered to him as per the contract of November 10, 1905, the amount of all the credits accounted for falling short of the total, though the difference is small.

I find from this accounting and from other evidence presented at the trial that the plaintiff has collected on all of the credits turned over to him as aforesaid P61,715.98, of which amount the sum of P20,736.95 has been delivered to the defendant, leaving a balance collected by plaintiff and undelivered to the defendant of P40,979.03.

That in an action begun by the plaintiff for the recovery of the credit against one Emilio Escay upon appeal to the Supreme Court the amount of the claim was reduced P7,738. That the balance of the credit against Emilio Escay has been paid in full by the execution of judgment obtained by the plaintiff against him, amounting to the sum of P22,086.43, that amount being the balance of the original claim less the reduction made by the Supreme Court.

It also appears that the claim against Quirino Gamboa has been satisfied by the sale of the debtor's property.

It further appears that the claims against Emilio Escay and Quirino Gamboa were prosecuted to judgment and execution issued and the property of the debtors sold under execution to satisfy the judgments and that one Richard Nolan purchased the property at sales, under an agreement with the plaintiff, without any money being paid, and that afterwards he transferred the properties thus purchased to the plaintiff, who now holds them in his possession.

There is no doubt but that there is a breach of the contract made between the plaintiff and defendant so that any contemplation of the terms of the contract in relation to conditions of payment need not be considered.

It appears that there was a receiver appointed at one time and that a portion of the credits and property involved has come into his possession.

The conclusions are that the plaintiff having failed to perform the contract on his part the defendant is entitled to a return of his property in so far as it can be returned and to judgment for the value of the balance which can not be returned, which value must be determined as the proceeds which the plaintiff received from such claims, together with legal interest upon the amount of cash received by the plaintiff upon such claims from the time of the commencement of this action, which was by filing the complaint herein on the 4th day of March, 1911.

That the credits and property remaining in plaintiff's custody or in that of the receiver are as follows:

The unpaid balances of the claims against Vicente Araneta, Pedro Yulo, Generoso Gamboa, Rosendo Hernaez, Vicente Mateo Conlu, Luciano Aguirre, Inocente de la Rama Felix Arceo, Agencia de

Silay, and the whole of the claims of Cresenciano Araneta, Silverio Conlu, Augustin Moyco, Benedicto Magallanes, Domingo Hernaez, Alfonso Santa Ana, Guillermo Ascona, Marcelino Ascona, Miguel Ascona, Felix Loesin, Santiago Reyes, Maximino Lopez, Ponciano Maravilla, Gonzalo Hofileña, José Ereñeta, Roque Benedicto Garbanzos, Basillo Mahinay, Toribio Goles, Roman Novella, Eduardo Santa Ana, Francisco Sajo, and Gregorio Sajo, and for the properties received by the plaintiff from the sale of property of Quirino Gamboa, and for the property received upon the sale arising out of the collections of the credit against Emilio Escay, it appearing that the two last mentioned properties, under the conditions of the contract, must be held by the plaintiff in trust for the defendant.

That for the satisfaction of this indebtedness on the part of plaintiff to defendant the securities given by plaintiff and his wife in accordance with the terms of the document made on November 10, 1905, are liable.

In relation to the damages claimed to have been suffered by defendant I find that no damage has been shown by the evidence other than such as has been determined in the findings heretofore set forth, and the conclusion is that defendant is not entitled to recover damages as claimed.

Let judgment be entered in favor of the defendant La. Compañía General de Tabacos de Filipinas, and against the plaintiff, Alejandro Montelibano y Ramos, for the sum of P40,979.03, with interest thereon at six per cent per annum from the 4th day of March, 1911, and for the possession and delivery of the following described credits, together with all the documents of security or guarantee thereon, and if delivery thereof can not be had, the values thereof as set forth against each credit, which is determined as the face of the credit, and all interest accruing thereon as provided in the credit itself, and in case no interest is provided for with

44 interest at six per cent per annum from the 4th day of March, 1911:

Vicente Araneta, balance.....	P245.63
Pedro Yulo, balance.....	415.49
Generoso Gamboa, balance.....	282.04
Rosendo Hernaez, balance.....	750.01
Vicente Mateo Conlu, balance.....	326.20
Luciano Aguirre, balance.....	8,111.25
Inocente de la Rama, balance.....	4,684.73
Felix Arceo, balance.....	2,101.37
Agencia de Silay, balance.....	24,935.35
Cresenciano Araneta.....	1,503.86
Silverio Conlu.....	873.28
Agustin Moyco.....	7,338.58
Benedicto Magallanes.....	819.73
Domingo Hernaez.....	11,181.05
Alfonso Santa Ana.....	496.57
Guillermo Ascona.....	6,241.52

Marcelino Ascona.....	1,771.88
Miguel Ascona.....	846.90
Felix Loesin.....	105.72
Santiago Reyes.....	24.45
Maximino Lopez.....	684.97
Ponciano Maravilla.....	11.44
Gonzalo Hofileña.....	86.96
José Ereñeta.....	9,926.64
Roque Benedicto Garbanzos.....	1,025.06
Basilio Mahinay.....	6,059.03
Toribio Goles.....	52.93
Roman Novella.....	14.32
Eduardo Santa Ana.....	5,817.27
Francisco Sajo.....	377.68
Gregorio Sajo.....	6,533.79
	<hr/>
	P103,645.70

And for all the property known as the Escay property, which was sold as a result of the action brought by plaintiff on the Escay credit, and in case delivery thereof can not be had the sum of P40,000, the value thereof, and the property known as the Gamboa property, which came into the plaintiff's hands by virtue of the proceedings against Gamboa on his debt to the defendant, or in case delivery thereof can not be had the sum of P6,178.10, and for the costs of the action.

Manila, P. I., this 18th day of February, 1913.

(Signed)

A. S. CROSSFIELD, *Judge*.

45 Against said decision the plaintiffs and appellants duly excepted, and on the 27th day of February, 1913, they presented the following motion for a new trial:

(Heading and Title Omitted.)

Comes now the plaintiff in the above entitled action and moves the Court for a new trial upon the following grounds:

1st. That the evidence is insufficient to justify the decision.

2. That the decision is against the law.

3. That the findings of fact are plainly and manifestly against the weight of the evidence.

Manila, P. I., February 27, 1913.

(Signed)

ROHDE & WRIGHT,

Attorneys for Plaintiff, 103 Anloague, Manila.

The foregoing motion for a new trial was denied by the Court on the 11th day of March, 1913, and to said denial the appellants duly excepted.

By virtue of which the appellants respectfully request the Court to approve this Bill of Exceptions and duly certify the same, ordering the clerk to forward it to the Supreme Court for proper action,

together with all the documentary and oral evidence adduced during the trial, which latter are made a part of this Bill of Exceptions.

Manila, P. I., March 10, 1913.

(Signed)

ROHDE & WRIGHT,
Attorneys for Appellants, 103 Anloague, Manila.

46

Presented on the 11th day of March, 1913, at 10.30 a. m.

(Signed)

J. McMICKING, *Clerk.*

Order.

I hereby certify that the foregoing bill of exceptions is correct and contains all the essential parts for a clear understanding of all the errors assigned.

Execution of the judgment shall not be stayed unless the appellant executes a good and sufficient bond in the sum of P25,000 to secure the performance of the judgment appealed from in relation to the money part of the judgment and a bond of P45,000 in relation to the bond requiring the delivery of property as set forth in the judgment or the payment of the value thereof as fixed by the judgment, both bonds to be with sureties approved by the court, and both to secure the performance of the judgment appealed from in case it be affirmed in whole or in part.

Manila, P. I., this 15th day of March, 1913.

(Signed)

A. S. CROSSFIELD, *Judge.*

The undersigned certifies that the bill of exceptions composed of 45 typewritten sheets is the original of the bill of exceptions presented by the party appellant and approved by this Court.

In witness of which I sign the present in Manila on this 8th day of April, 1913.

(Signed)

J. McMICKING, *Clerk*

47

Supreme Court of the Philippines. Clerk's Office. Filed March 11, 1913, 10.30 a. m. (Signed) V. Albert, Clerk.

Let it appear that on the 13th day of May, 1913, there were sent by registered mail to each one of the attorneys in this cause three (3) copies of these printed special proceedings.

(Signed)

V. ALBERT,
Clerk Supreme Court P. I.,
By P. R. ANGELL, *Deputy.*

On the 25th day of July, 1913, the following stipulation was filed in the Supreme Court by the parties in this case:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

G. R. No. 8837.

ALEJANDRO MONTELIBANO et al., Plaintiffs and Appellants,
versus
LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant and
Appellee.

48 *Stipulation.*

The parties to the above-entitled cause, through their respective undersigned attorneys, by the present instrument stipulate and covenant that, subject to the approval of this Honorable Court, the Bill of Exceptions presented in said cause is amended by adding thereto the following paragraphs, to-wit:

I.

That the plaintiffs, on the 4th day of March, 1911, presented their complaint, which, after amendment made thereto, reads as follows:

(Heading and Title Omitted.)

"Amended Complaint.

As first cause of action the plaintiffs allege:

I.

That the plaintiff Alejandro Montelibano is of age, married, by profession a farmer, and a resident of the town of Bacolod of the Province of Occidental Negros, Philippine Islands, and that the plaintiff Liceria Montelibano y Conlú is the wife of the former.

II.

That the defendant is a corporation duly constituted under the laws in force in the Philippine Islands and domiciled in this city of Manila at No. 90 of Calle del Marques de Comillas, of the barrio of Concepción, district of Paco.

III.

That on or about the 25th day of October, 1905, the plaintiff herein executed with the defendant herein a written contract, copy of which is attached to this complaint, marked Exhibit 'A', and which is made an integral part of the same, which exhibit is the one that was presented in the original complaint marked with the same letter.

IV.

That in fulfillment of said contract the plaintiff herein has taken all steps possible to carry into effect the collection of the credits detailed in the first paragraph of said contract, both in a judicial and extrajudicial manner.

V.

That the plaintiff, Montelibano, has only been able to collect the following of the credits enumerated in the document Exhibit 'A': Aniceto de la Rama, six thousand five hundred pesos (P6,500), leaving balance for collection amounting to eleven hundred and eighty-four pesos and sixty-three centavos (P1,184.63), the delivery of the vouchers thereof still pending; Luciano Aguirre, twelve thousand pesos (P12,000), leaving balance for collection amounting to two thousand two hundred and fifty-four pesos and fifty-seven centavos (P2,254.57), subject to the presentation of the vouchers; Domiciano Gonzaga, two thousand and one pesos and ninety-six centavos (P2,001.96); Marciano Lopez, three thousand pesos (P3,000.), leaving balance for collection amounting to two thousand and twenty-two pesos and six centavos (P2,022.06), awaiting presentation of vouchers; Generoso Gamboa, four hundred and fifty-seven pesos and four centavos (P457.04); Rosendo Hernaez, collected four thousand five hundred pesos (P4,500), there remaining due
50 twelve hundred and fifty pesos and one centavo (P1,250.01) pending the presentation of the vouchers; Pedro Yulo, one thousand and thirty-three pesos (P1,033.); all the amounts enumerated having been collected at the time of the presentation of the complaint instituting this litigation, and amounting in all to twenty-nine thousand and four hundred and ninety-one pesos and four centavos (P29,491.04) Philippine currency.

VI.

That at no time did the defendant herein deliver to the plaintiff herein the signed vouchers of the debtors showing that the latter have made use of the credits which were granted to them in the mortgage deeds allowing them such credits; such mortgage deeds were the only documents that the plaintiff herein, Montelibano, received.

VII.

That the remaining credits set forth in the first clause of the said contract do not exist in the amount stated therein, nor are they legitimate in their nature, and for this reason, in spite of all the efforts that the plaintiff herein has made to effect the collection of the same, it has been impossible to do so.

VIII.

The defendant company is responsible for the injuries and damages that have been suffered by the plaintiff by reason of the aforesaid contract of the 25th of October, which injuries and damages

amount to the sum of one hundred and twenty-nine thousand seven hundred and thirty-four pesos and twenty-nine centavos (P129,734.29) Philippine currency, being made up as follows:

51	For reimbursement of the difference between the actual value of the credits and the price at which they were sold to the plaintiff.....	P49,177.69
	For the interest on P149,177.86 at the rate of nine per cent (9%) per annum corresponding to the plaintiff according to the instrument of the 25th of October, 1905, for six years, made up by the difference existing between the amount collected and the actual value of the credits	80,556.60
	Total	P129,734.29

As second cause of action the plaintiffs allege:

I.

They reproduce as second cause of action paragraphs I, II and III of the foregoing.

II.

That according to the aforesaid Exhibit 'A', the plaintiffs herein, confiding in the existence and legitimacy of the credits therein mentioned, executed a mortgage deed to the value of forty-six thousand pesos (P46,000) as a guaranty for the contract.

III.

That said credits neither existing nor being legitimate, the guaranty constituted for the effectiveness of the same ought to be cancelled by the representative of the entity here defendant.

As third cause of action the plaintiffs allege:

I.

They reproduce as this cause of action paragraphs I, II and III of the foregoing.

II.

That after the expiration of the first day of payment agreed upon in the instrument marked Exhibit 'A', the defendant herein required the plaintiff to execute a guaranty for the twenty thousand pesos, the sum to which said payment amounted, and to that end he signed an instrument of mortgage of properties belonging to him, situated on the Island of Negros, of the value of twenty thousand pesos (P20,000) Philippine currency.

III.

That the credits not being correct in amount, nor legitimate in their nature, said mortgage deed ought to be cancelled by the representative of the defendant entity.

For the Reasons Alleged.

The plaintiff herein respectfully asks the Court that after this cause has been duly tried and it has been seen that the allegations made have been duly proved, sentence be rendered in favor of the plaintiff and against the defendant, declaring null and void the contract marked Exhibit 'A' on account of the falsity of the consideration thereof, ordering that the defendant shall pay to the plaintiff herein the sum of one hundred and twenty-nine thousand seven hundred and thirty-four pesos and twenty-nine centavos (P129,734.-53 29) Philippine currency, as per items set out in paragraph VIII of this complaint, and finally ordering that the defendant entity proceed to the execution of the corresponding instrument, making therein the cancellations of the mortgages constituted by the plaintiff in favor of the defendant entity, and that the latter pay the costs of the case, and that the Court also decree whatever other remedy may be considered pertinent to the interests of justice or equity.

Manila, 3d of June, 1911.

O'BRIEN & DE WITT,
By ANTONIO V. HERRERO,
Attorneys for Plaintiffs, 18 Plaza Cervantes, Manila, P. I.

That the Exhibit marked "A", to which the foregoing amended complaint refers, is the same document which is designated Exhibit "A" and attached to the answer and cross-complaint of the defendant and set forth at pages 9 to 20 inclusive of the printed bill of exceptions.

II.

That the trial court, in his order denying the motion of the plaintiffs for a new trial, modified the dispositive part of his decision so as to make it read as follows:

"Let judgment be entered in favor of the defendant, La Compañia General de Tabacos de Filipinas, and against the plaintiff, Alejandro Montelibano y Ramos, for the sum of P40,979.03, less P22,086.43 if the defendant seeks to recover upon a subsequent clause of this order the property which was sold as a result of the action brought by plaintiff on the Emilio Escay debt or the value thereof in case delivery of the property is not made, and interest on the full amount or that amount with the subtraction made, at six per cent per annum from the 4th day of March, 1911, the date of the commencement of this action by the filing of the complaint herein, and for the possession and delivery of the following described credits, together with all the documents of security or guarantee thereon, and if delivery thereof can not

be had, the value thereof as hereinafter set forth against each credit, which is determined as the face of the credit, and all interest accruing thereon as provided in the credit itself, and in case no interest is provided for with interest at six per cent per annum from the 4th day of March, 1911:

Vicente Araneta, balance.....	P245.63
Pedro Yulo, balance	415.49
Generosa Gamboa, balance	282.04
Rosendo Hernaez, balance	750.01
Vicente Mateo Conu, balance	326.20
Luciano Aguirre, balance	8,111.25
Inocente de la Rama, balance	4,684.73
Felix Arceo, balance	2,101.37
Agencia de Silay, balance	24,935.35
Cresenciano Araneta.....	1,503.86
Silverio Conlu	873.28
Agustin Moyco	7,338.58
Benedicto Magallanes	819.73
Domingo Hernaez	11,181.05
Alfonso Santa Ana	495.57
Guillermo Ascona	6,241.52
Marcelino Ascona	1,771.88
Miguel Ascona	846.90
Felix Loesin	105.72
Santiago Reyes	24.45
Maximino Lopez	684.97
Ponciano Maravilla	11.44
Gonzalo Hofileña	86.96
José Ereñeta	9,926.64
Roque Benedicto Garbanzos	1,025.03
Basilio Mahinay	6,059.03
Toribio Goles	52.93
Roman Novella	14.32
Eduardo Santa Ana	5,817.27
Francisco Sajo	377.68
Gregorio Sajo	6,533.79
	<hr/>
	P103,645.70

55 And for all the property known as the Escay property, which was sold as a result of the action brought by plaintiff on the Epilio Escay debt, and in case delivery thereof can not be had the sum of P40,000, the value thereof, provided that defendant does not elect to take the full judgment for money collected as hereinbefore stated, and if such election is made then this clause in relation to the return of this property is annulled, and the property known as the Gamboa property, which came into plaintiff's hands by virtue of the proceedings against Gamboa on his debt to the defendant, or in case delivery thereof can not be had the sum of P6,178.10, and for the costs of the action. With the judgment thus made clear, the motion for a new trial is denied."

III.

That the originals of the documents attached to the answer and cross-complaint of the defendant are not underscored as shown in the printed bill of exceptions.

The parties unite in requesting that the bill of exceptions in this cause be allowed as amended in accordance with the preinserted stipulation, and the defendant and appellee, in case the court may deem it convenient, will have this stipulation printed as an amendment to the printed bill of exceptions.

Manila, P. I., July 23, 1913.

(Signed) ROHDE & WRIGHT,

Attorneys for Plaintiffs.

56 (S'g'd) BRUCE, LAWRENCE, ROSS & BLOCK,

By W. H. LAWRENCE,

Attorneys for Defendant, No. 15 Plaza Moraga, Manila.

Supreme Court of the Philippine Islands, Clerk's Office. Filed July 25, 1913. 3.45 p. m. V. Albert, Clerk.

Let it appear that on the 29th day of August, 1913, there were sent by registered mail to each one of the attorneys in this case three (3) copies of this stipulation.

V. ALBERT,

Clerk Supreme Court, P. I.,

By P. R. ANGELL, *Deputy.*

On the 26th day of July, 1913, the foregoing stipulation was approved by the Supreme Court and it was ordered that the same be printed and attached to the last page of the Bill of Exceptions filed in the case.

On January 21, 1914, the parties having filed their briefs, the case was submitted to the Supreme Court.

On February 20, 1914*, the Supreme Court rendered the following decision:

57 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 8837.

ALEJANDRO MONTELIBANO Y OTRA, Plaintiffs and Appellants,
versus
LA COMPAÑIA GENERAL DE TABACOS, Defendant and Appellee.

Submitted: January 12, 1914.

Decision Promulgated: February 20, 1914.

Per Curiam:

This is an action which has for its object to declare null and void a certain contract entered into between the plaintiffs and the defendant fully set out in the complaint, and for damages in the sum of P129,734.29. The complaint also asks cancellation of certain mortgages given by the plaintiff to the defendant to secure the payments which he had agreed to make in accordance with the contract sought to be annulled.

The defendant company set out a counterclaim, in which it asked for an accounting and damages, the appointment of a receiver, and for the return of all the credits which had been turned over to the plaintiff for collection in accordance with the contract set forth in the answer.

The learned trial court after hearing the evidence found all the facts in favor of the defendant company, and upon these facts based a judgment for the return to the defendant of all the credits which it had turned over to the plaintiff in pursuance of the contract set out in the answer and, if said credits could not be returned, the value thereof as set forth in said judgment. The court
58 also found a judgment of P40,979.03 in favor of the defendant and against the plaintiff, ordering the delivery of what is known as the Escay property, and in case delivery thereof could not be made, the sum of P40,000, its value; also the delivery of the Gamboa property, and in case delivery thereof could not be had, the sum of P6,178.10.

We are satisfied that the judgment is correct. The title to the credits never passed to the plaintiff. They were delivered into his possession for collection, with the agreement that he could become the owner thereof by paying P130,000 in the manner specified. None of the payments were made as agreed and, as a consequence, the credits remained the property of the defendant company. A refusal to deliver them was properly the subject of a counterclaim and the basis for a demand for affirmative relief. The court correctly found that the credits must be returned or their value paid.

The judgment appealed from is affirmed, with costs against the appellants.

After the expiration of 20 days let judgment be entered in accordance herewith, and 10 days thereafter let the case be returned to the court whence it came for execution.

So ordered.

(Signed)

"

"

"

"

C. S. ARELLANO.

A. C. CARSON.

SHERMAN MORELAND.

GRANT T. TRENT.

MANUEL ARAULLO.

59 On March 14, 1914, final judgment was entered as follows:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

File No. 8837.

ALEJANDRO MONTELIBANO ET AL., Plaintiffs and Appellants,
versus

LA COMPAÑIA GENERAL DE TABACOS, Defendant and Appellee.

Judgment.

March 14, 1914.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 20th day of February, A. D. nineteen hundred and fourteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 18th day of February, nineteen hundred and thirteen, and from which the above-entitled appeal was taken, be, and the same is hereby affirmed, with costs against the appellants.

It is further ordered that the appellee recover from the appellants the sum of P40.00, as costs.

(Signed)

V. ALBERT,

Clerk of the Supreme Court of the Philippine Islands.

60 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing fifty-nine (59) pages of typewritten matter contain a true and correct translation and transcript of the record and proceedings (as per præcipe filed) had in the Court of First Instance of Manila and in the Supreme Court

of the Philippine Islands in the case of Alejandro Montelibano et al., Plaintiffs and Appellants, versus La Compañia General de Tabacos de Filipinas, Defendant and Appellee.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court this 23rd day of May, 1914, A. D.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

61 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Alejandro Montelibano et al. were plaintiffs and appellants, and La Compañia General de Tabacos, was defendant and appellee, a final judgment was rendered by said Supreme Court on the fourteenth day of March, A. D. 1914, in favor of the said La Compañia General de Tabacos, and against the said Alejandro Montelibano et al., and that on the fourteenth day of March, A. D. 1914, the said Alejandro Montelibano et al. prayed for an order allowing an appeal on his behalf to the Supreme Court of the United States, which was duly allowed on the same day.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court at Manila, P. I., this twenty-third day of May, A. D. 1914.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

62 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in the said Court, wherein Alejandro Montelibano et al. were plaintiffs and appellants, and La Compañia General de Tabacos, was defendant and appellee, a final judgment was rendered by said Supreme Court on the fourteenth day of March, A. D. 1914, in favor of the said La Compañia General de Tabacos, and against the said Alejandro Montelibano et al., and that on the fourteenth day of March, A. D. 1914, the said Alejandro Montelibano et al. sued out a writ of error to said Supreme Court, directed to remove said cause to the Supreme Court of the United States.

In testimony whereof, I hereunto subscribe my name and affix

the seal of said Supreme Court at Manila, P. I., this twenty-third day of May, A. D. 1914.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

63 Supreme Court, Philippine Islands, Clerk's office. — Apr.
1, 1914, 10.18 A. M.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,

vs.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Præcipe.

Clerk of the Supreme Court of the Philippine Islands:

SIR: You will please certify to the Supreme Court of the United States of America, the following parts of the record in the above entitled cause:

1. The last amended complaint of the plaintiffs.
 2. The matter contained in the printed bill of exceptions.
- Manila, P. I., March 31, 1914.

Respectfully,

ROHDE & WRIGHT,
Attorneys for Plaintiff, 103 Juan Luna, Manila.

Received copy this 1st day of April, 1914.

LAWRENCE, ROSS & BLOCK,
Attorneys for Defendant and Complaint.

64 Supreme Court, Philippine Islands, Clerk's Office. — Mar.
14, 1914, 11.40 A. M.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,

vs.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Petition for Appeal and Allowance of Appeal.

The above named plaintiffs, conceiving themselves aggrieved by the judgment made and entered on the 14 day of March, nine-

teen hundred and fourteen, in the above entitled cause, do hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

ROHDE & WRIGHT,
Attorneys for Plaintiff & Appellant.

The foregoing appeal is hereby allowed.

SHERMAN MORELAND,
Associate Justice of the Supreme Court, P. I.

65 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,
vs.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Assignment of Errors Attached to Petition for Appeal.

The plaintiffs pray an appeal from the final decree of this Court to the Supreme Court of the United States, and assign for error:

1. The Supreme Court of the Philippine Islands erred in holding the plaintiff Alejandro Montelibano was constituted the agent of the defendant by virtue of the contracts, Exhibits "A" and "B" attached to defendant's answer and cross-complaint.

2. The Supreme Court of the Philippine Islands erred in not sustaining the third defense of plaintiffs to the answer and cross-complaint of defendant.

3. The Supreme Court of the Philippine Islands erred in rendering judgment against the plaintiff Alejandro Montelibano for the sum of P40,979.03 pesos, together with interest thereon of six per cent per annum (6%) from March 4th, 1911, and alternative judgment for the sum of P103,645.70, or the delivery of the credits with documents and securities as set forth in the judgment of the Court of First Instance, and for the delivery to defendant of the Escay and Gamboa properties or the value thereof fixed at P46,178.00 pesos.

4. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance.

ROHDE & WRIGHT,
Attorneys for Plaintiffs and Appellants.

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS, Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Citation of Appeal.

The President of the United States to La Compañia General de
Tabacos de Filipinas, Greeting: ..

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the Clerk's Office of the said Court on the 14 day of March, 1914, in a cause wherein Alejandro Montelibano y Ramos and Liceria Montelibano y Conlu are appellants and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 14 day of March, 1914.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN J. MORELAND,

*Associate Justice of the Supreme Court
of the Philippine Islands.*

Service acknowledged and copy received.

BRUCE, LAWRENCE, ROSS & BLOCK,
Att'ys for Defendant.

67 Supreme Court, Philippine Islands, Clerk's Office, Mar.
14, 1914, 11.38 A. M.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS, Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Petition for Writ of Error.

And now come Alejandro Montelibano y Ramos, y Liceria Montelibano y Conlu, plaintiffs herein, and say:

That on or about the 14 day of March, 1914, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against these plaintiffs, in which judgment and proceedings had prior hereto in this cause certain errors were committed to the prejudice of these plaintiffs all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, these plaintiffs pray that a writ of error may be issued in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated, may be sent to the Supreme Court of the United States.

ROIDE & WRIGHT,

Attorneys for Plaintiffs and Plaintiffs in Error.

fa.

68 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS, Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Assignment of Errors Attached to Petition for Writ of Error.

The plaintiffs in error in this case in connection with the petition for a writ of error, make the following assignment of errors which they aver exist:

1. The Supreme Court of the Philippine Islands erred in holding the plaintiff Alejandro Montelibano was constituted the agent of the defendant by virtue of the contracts, Exhibits "A" and "B" attached to defendant's answer and cross-complaint.

2. The Supreme Court of the Philippine Islands erred in not sustaining the third defense of plaintiffs to the answer and cross-complaint of defendant.

3. The Supreme Court of the Philippine Islands erred in rendering judgment against the plaintiff Alejandro Montelibano for the sum of P40,979.03 pesos, together with interest thereon of six per cent (%) annum from March 4th, 1911, and alternative judgment for the sum of P103,645.70, or the delivery of the credits with documents and securities as set forth in the judgment of the Court of First Instance, and for the delivery to defendant of the Escay and Gamboa properties or the value thereof fixed at P46,-178.00 pesos.

4. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance.

ROHDE & WRIGHT,

Attorneys for Plaintiffs, and Plaintiffs in Error.

fa.

69 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS, y LICERIA MONTELIBANO Y CONLU, Plaintiffs,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you between Alejandro Montelibano y Ramos, y Liceria Montelibano y Conlu, plaintiffs and La Compania General de Tabacos de Filipinas, defendant, wherein it appears a manifest error has happened, to the great damage of the said plaintiffs, as by their complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this

writ, so that you may have the same at the City of Washington on the 13 day of July next in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

70 Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 14 day of March in the year of Our Lord One Thousand Nine Hundred and Fourteen and of the independence of the United States of America the One Hundred and Thirty Eight.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court P. I.

The foregoing writ of error is allowed this 14th day of March, 1914, upon the filing by plaintiffs of a bond with good and sufficient surety, in the sum of P30,000.00 pesos, United States Currency, to prosecute the said writ of error to effect and answer all damages and costs if they fail to make good their plea.

Let a certified copy of the record testimony, stipulation, and all proceedings herein, be transcribed forthwith to said Supreme Court of the United States.

SHERMAN J. MORELAND,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

71 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS, Y LICERIA MONTELIBANO Y CONLU, Plaintiffs,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Citation of Writ of Error.

To La Compañía General de Tabacos de Filipinas:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 13th day of July next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands, wherein Alejandro Montelibano y Ramos, y Liceria Montelibano y Conlu are plaintiffs and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in this behalf.

Given under my hand at the City of Manila, in the Philippine Islands, this 14 day of March, in the year of Our Lord One Thousand Nine Hundred and Fourteen.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN J. MORELAND,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

fa.

Service acknowledged and copy received.

BRUCE, LAWRENCE, ROSS & BLOCK,
Attys for Defendant.

72 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8837.

ALEJANDRO MONTELIBANO Y RAMOS, Y LICERIA MONTELIBANO Y
CONLU, Plaintiffs,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Certified Copy of Bond.

Know All Men by These Presents:

That we, Alejandro Montelibano y Ramos, y Liceria Montelibano y Conlu, as principals, and Vicente Montelibano and Lucio Echaus Tan Lina, as sureties, are held and firmly bound unto the above named La Campaña General de Tabacos de Filipinas in the sum of (P30,000) thirty thousand pesos, to be paid to the said La Campaña General de Tabacos de Filipinas for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 14 day of March, in the year of Our Lord One Thousand Nine Hundred and Fourteen.

Whereas, the above named Alejandro Montelibano y Ramos, y Liceria Montelibano y Conlu have prosecuted an appeal and writ of error to the Supreme Court of the United States, to reverse the decree and judgment rendered in the above entitled suit, by the Supreme Court of the Philippine Islands.

Now therefore, the condition of the obligation is such, that
73 if the above named Alejandro Montelibano y Ramos, y Liceria Montelibano y Conlu shall prosecute said appeal and writ of error to effect and answer all damages and costs, if they fail to make said appeal or writ of error good, then this obligation shall

be void, otherwise the same shall be and remain in full force and virtue.

(Signed)

ALEJANDRO MONTELIBANO.
LICERIA DE MONTELIBANO.
VICENTE MONTELIBANO.
LUCIO E. TAN LINA.

Subscribed and sworn to before me this 14th day of March, 1914, after final judgment of Supreme Court had been entered.

(Signed)

V. ALBERT,
Clerk Supreme Court.

Approved:

(Signed)

SHERMAN MORELAND,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

I hereby certify that the foregoing is a true and correct copy of its original filed in my office.

Manila, P. I., May 23, 1914.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court P. I.

74 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

File No. 8837.

ALEJANDRO MONTELIBANO et al., Plaintiffs and Appellants,

vs.

LA COMPAÑIA GENERAL DE TABACOS, Defendant and Appellee.

Judgment: March 14, 1914.

(Certified Copy of Final Judgment.)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 20th day of February, A. D. nineteen hundred and fourteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 18th day of February, nineteen hundred and thirteen, and from which the above-entitled appeal was taken, be, and the same is hereby affirmed, with costs against the appellants.

It is further ordered that the appellee recover from the appellants the sum of P40.00, as costs.

[Seal Corte Suprema, Islas Filipinas.]

(Signed)

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

I hereby certify that the foregoing is a true and correct copy of its original.

Manila, P. I., May 23, 1914.

V. ALBERT,
Clerk Supreme Court P. I.

Endorsed on cover: File No. 24,329. Philippine Islands Supreme Court. Term No. 217. Alejandro Montelibano y Ramos and Liceria Montelibano y Conlu, appellants and plaintiffs in error, vs. La Compania General de Tabacos de Filipinas. Filed August 5, 1914. File No. 24,329.

Office Supreme Court, U. S.

FILED

MAR 6 1916

JAMES D. MAHER

CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1915; No. 217

ALEJANDRO MONTELIBANO Y RAMOS AND

LICERIA MONTELIBANO Y CONLU,

Appellants and Plaintiffs in Error,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS,

Appellee and Defendant in Error.

Brief for Appellant and Plaintiff in Error

HARRY W. VAN DYKE,

Counsel for Appellants and

Plaintiff in Error.



IN THE
Supreme Court of the United States
OCTOBER TERM, 1915; No. 217

ALEJANDRO MONTELIBANO Y RAMOS AND
LICERIA MONTELIBANO Y CONLU,

Appellants and Plaintiffs in Error,
vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS,
Appellee and Defendant in Error.

Brief for Appellant and Plaintiff in Error

STATEMENT.

This case was brought here for review by writ of error to the Supreme Court of the Philippine Islands and appeal from a final judgment of that court affirming a judgment of the Court of First Instance of Manila (R., pp. 34 *et seq.*). The petition, as amended March 4, 1911 (*id.*, pp. 27 *et seq.*), alleged that on or about the 25th of October, 1905, the plaintiff, Alejandro Montelibano y Ramos, a resident of the town of Bac-lod, Province of Occidental Negros, entered into a contract with one Luis G. Espoy, as representative in Iloilo of the defendant, the Compania General de Tabacos de Filipinas, a corporation domiciled in Manila, by virtue of which certain accounts that belonged to that corporation (or "credits" as they are called in the proceedings in the case), and which amounted in the aggregate to P. 179,177.86, were delivered to the plaintiff, Alejandro Montelibano, with authority to collect them.

Whether the contract referred to, under which that delivery was made, is to be construed as a contract of sale or as one merely creating an agency is one of the questions at issue in

the case. Plaintiffs, however, alleged that in fulfilment of that contract, of whatever character it was, the plaintiff Alejandro Montelibano had "taken all possible steps" to collect the credits therein described "both in a judicial and extrajudicial manner" but had only been able to collect those mentioned in paragraph V of the petition (*id.*, p. 28) and alleged that the defendant company had not delivered to him, as agreed, the signed vouchers of the debtors showing that the latter had actually made use of the credits granted; that the credits, other than those mentioned in said paragraph V "do not exist in the amounts stated, nor are they legitimate in their nature" (*id.*).

After having alleged that, "by reason of the aforesaid contract," they had suffered injuries and damages in the sum of P.129,734.29, as detailed in the petition, plaintiffs further said that, "confiding in the existence and legitimacy" of the credits referred to, and as a guarantee of the performance of their obligations under the contract, they executed certain mortgages on properties valued, respectively, at P.46,000 and P.20,000, which, under the circumstances, ought to be cancelled, and prayed that the contract in question be declared "null and void" because of the "falsity of the consideration thereof;" that the defendant company be required to pay to them the P.129,734.29 alleged as damages; that the mortgages mentioned be ordered cancelled, and that the court decree "whatever other remedy may be considered pertinent to the interests of justice and equity" (*id.*, p. 30).

The reply of the defendant company was made in the form of an answer and cross-complaint, which was filed on the 3rd of January, 1911 (*id.*, p. 2), also an amendment of paragraph IX and of the prayers of the cross-complaint, filed the 14th of August, 1912, with the permission of the court (*R.*, pp. 20, 21). The original answer and cross-complaint admitted that the contract described by plaintiffs was entered into and a copy was attached, marked Exhibit A. It also alleged that on the 7th of December, 1908, the defendant company and plaintiffs entered into another or supplemental contract, in certain respects modifying the former one, and a copy of which was attached, marked Exhibit B. It was admitted also that the company delivered to the plaintiff Alejandro Montelibano all

the credits described, amounting to P.179,177.86, and that, on the 11th of October, 1907, the said Alejandro paid the defendant company P.20,000 as the first instalment on account of an agreed total of P.130,000, the amount at which, under the terms of the contract Exhibit A, he had the option, as defendant alleged, "of purchasing and acquiring the ownership of said credits," also that he afterwards made another payment of P.736.95.

Defendant charged refusal by plaintiffs to account for the principal and interest of sums alleged to have been collected by the said Alejandro Montelibano and to return the credits that still remained uncollected, as provided in the contracts that he should, "or in any manner to comply with his obligations under said contracts," and averred that, in order to determine the exact amount due by plaintiffs, an accounting was necessary; that, unless a receiver were appointed, there would be danger of loss, etc.; that all the credits referred to in the contracts were secured by mortgages on real property; that, because of the refusal of plaintiffs to return the uncollected credits, those securities were in danger of being lost, wasted or injured, and that, because of such failure on the part of plaintiffs, and because of the plaintiff Alejandro Montelibano's fraudulent use and misappropriation of moneys collected, the defendant company had been damaged in the sum of P.50,000.

The prayers were that plaintiffs' action be dismissed; that the said Alejandro Montelibano be required to render an accounting; that judgment be entered for whatever amount might be found due by plaintiffs under the contracts and for P.50,000 damages; that a receiver be appointed; that plaintiffs be ordered to deliver to such receiver "all moneys, credits and properties" connected with the transaction, and that such other and further relief as to the court might seem equitable and just might be decreed. Application for the appointment of the receiver was made on the 22nd of July, 1911 (id., p. 18) and granted (id., p. 23, fol. 42) and on the 15th of February, 1912, the plaintiffs filed their answer to the cross-complaint (id., p. 18).

In it they denied that the court had jurisdiction of the action instituted by the cross-complaint unless the defendant company

should renounce any right it might have, by virtue of the contract Exhibit A, to the real estate of the plaintiff Liceria Montelibano, and, after having denied most of the allegations in the cross-complaint, added that "the plaintiffs never have declined, and do not now decline, to fulfill their part of the obligations contracted by the contract, copy of which is attached to the cross-complaint as Exhibit A; that the plaintiffs have offered, and offer, to pay to the defendant, in addition to the sum of P.20,736.95 already paid, the sum of P.51,525.05, which sums, together with the sum of P.7,738., in which amount the credit of Escay was reduced by the Supreme Court, aggregate the sum of P.80,000., and to hand back to the defendant credits and parts of credits of those mentioned in the cross-complaint to the value of P.99,177.86 and to return to it the corresponding documents received, but that the defendant has refused to accept the same."

The amendment of the cross-complaint above mentioned (id., p. 20) charges that the plaintiff Alejandro Montelibano, with intent to defraud the defendant company, refused and had failed to pay over to the receiver, or to account to him for, either the sums referred to in the original cross-complaint as having been collected or certain property that had come into his possession by virtue of transactions and judicial proceedings instituted by him in connection with his efforts to collect, and added to the original prayers one to the effect that the said Alejandro Montelibano be compelled to transfer said property to the receiver; that orders be issued for the cancellation of any entries that might appear in the registries of property showing Alejandro Montelibano or his agents to be the owner or owners thereof, and that plaintiffs be required to deliver to defendant the original of the contract Exhibit B, which, in the cross-complaint, the plaintiff Alejandro Montelibano is alleged to have retained and as having declined to surrender.

The case having come on for trial, the Court of First Instance rendered a decision on the 18th of February, 1913 (R., pp. 21 *et seq.*), in favor of the defendant. The judgment (id., pp. 30, 31) was for P.40,000., with interest at six per cent from March 4, 1911 (the date of the beginning of the action), and for the delivery to the defendant company of the credits

specified in the judgment, with the security pertaining to each, or the value of said credits, which the court fixed at P.103,-645.70. Provision was made, however, for the deduction of P.22,086.43 in the event that the defendant should elect to seek recovery of certain property that was sold and came into Alejandro Montelibano's possession as a result of an action brought by the said Alejandro Montelibano against Emilio Escay, a debtor under one of said credits, and that the plaintiff Alejandro Montelibano should pay P.6,178.10 as the value of, or transfer to defendant, the property known as the Gamboa property, into possession of which he came through proceedings against a debtor under one of said grants of credit whose name was Gamboa.

On the 27th of February, 1913, plaintiffs presented a motion for a new trial on the grounds, 1st, that the evidence was insufficient to justify the decision, 2nd, that the decision was against the law, and, 3rd, that the findings of fact were plainly and manifestly against the weight of the evidence (*id.*, p. 25). That motion was denied on the 11th of March, 1913 (*id.*, p. 25), whereupon an appeal was taken to the Supreme Court of the Islands and the case was submitted on the 27th of January, 1914 (*id.*, p. 32). On the 14th of March, 1914, that court decided that the judgment of the Court of First Instance should be affirmed with costs against appellants (*id.*, p. 34).

Thereafter petitions for the allowance of an appeal and for writ of error were filed and granted (*id.*, pp. 36, 39) and with those petitions the present appellants and plaintiffs in error submitted the following:

ASSIGNMENTS OF ERROR

1. The Supreme Court of the Philippine Islands erred in holding that the plaintiff Alejandro Montelibano was constituted the agent of the defendant by virtue of the contracts Exhibits A and B attached to the defendant's answer and cross-complaint.

2. The Supreme Court of the Philippine Islands erred in not sustaining the third defence of plaintiffs to the answer and cross-complaint of defendant.

3. The Supreme Court of the Philippine Islands erred in rendering judgment against the plaintiff Alejandro Montelibano for the sum of P.40,979.03 pesos, together with interest thereon at six per cent per annum from March 4, 1911, and alternative judgment for the sum of P.103,645.70 or the delivery of the credits with documents and securities as set forth in the judgment of the Court of First Instance, and for the delivery to the defendant of the Escay and Gamboa properties or the value thereof fixed at P.46,178. pesos.

4. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance.

ARGUMENT.

PREFATORY STATEMENTS AS TO THE CONTRACTS, FACTS AND CONCLUSIONS OF LAW ON WHICH THE JUDGMENT THAT WAS AFFIRMED BY THE COURT BELOW WAS BASED.

As already said, this case was brought here by both writ of error and appeal. Counsel for appellant assume, of course, that one or the other of these will be dismissed and think it probable that it will be the writ of error, because, since the action is one that involves, not alone claims for damages, but, on the one side, prayers for the rescinding of contracts and cancellation of mortgages, and, on the other, for an accounting, for the appointment of a receiver and for relief in the nature of specific performance, it is essentially an action of an equitable character, and, as such, under the rulings of the court in *De la Rama v. De la Rama* (201 U. S. 203), *Behn v. Campbell* (205 U. S. 402) and *Gsell v. Insular Collector of Customs* (239 U. S. 93), reviewable here on appeal.

If so, this court might, under the rulings in those cases, consider questions of fact as well as of law; but we are precluded from asking the court to consider any *questions* of fact in this case, because, with the exception of the contracts and mortgages hereinbefore referred to, all the evidence (if there was any, for whether there was or not does not appear except by inference from what is said in the opinion of the trial court), that was submitted by either of the parties in the Court of First Instance has been omitted from the record. It is re-

spectfully suggested, therefore, that it makes very little difference whether the court shall conclude that it is the writ of error or the appeal that ought to be dismissed, it being only with questions of law that the court has to deal.

It is also respectfully submitted that even if the writ of error and not the appeal should be sustained in this case, the court might consider not of course *questions* of fact, but the *facts* as found by the Court of First Instance, for the purpose of determining whether those facts are sufficient to support the judgment (*Allen v. St. Louis National Bank*, 120 U. S. 20; *Stanley v. Albany County*, 121 U. S. 535; *Preston v. Prather*, 137 U. S. 604), or at least—that is, if the findings in the case should be regarded not as special findings of fact, and, therefore, as not falling within the principle established in those and other like cases—that the court may consider them, nevertheless, for the purpose of determining whether the principles of law the courts below applied to them were properly applied.

I. *As to the contracts.* The document described in the cross-complaint as a contract, and a copy of which is attached thereto marked Exhibit A, appears really to be, in substance, a sort of combination of memorandum of the original agreement between Alejandro Montelibano and Luis G. Espoy, as representative of the General Tobacco Company, a ratification of that agreement by the Tobacco Company as principal, a rejoinder by Liceria Montelibano, as the wife of Aleffiandro Montelibano, in the mortgage of the property situated in Silay, Province of Occidental Negros, and a consent on her part that those properties might be proceeded against in the event that her husband should fail to fulfill his obligations. The document is dated November 10, 1905, and quotes in full the original contract, which is dated the 25th of October in the same year.

In the first paragraph of the original contract of October 25, 1905, it is set forth that Luis G. Espoy, as representative of the General Tobacco Company, "delivers to Don Alejandro Montelibano y Ramos, for the purposes of collection, under the conditions hereinafter expressed, the following credits," then, in the eighth paragraph, after describing those credits by the name of the debtor in each case and the amount of the

credit granted, goes on to say that Alejandro Montelibano, when he had carefully examined them all, "stated that the total amount of the credits was P.179,177.86, as heretofore stated," and, still further on (in the same paragraph), adds that "he has examined to his satisfaction all the documents, writings and contracts evidencing the aforesaid credits, with which he is in conformity, and accepts them without any reservation," etc.

In the third paragraph Alejandro Montelibano "obligates himself to pay to the Compania General Tabacos de Filipinas at Iloilo, as the value of the credits set forth in detail in the first paragraph, the sum of P.130,000., current legal tender, in the following manner: In the month of December, 1906, P.20,000.; in the month of December, 1907, P.20,000.; in the month of December, 1908, P.20,000.; in the month of December, 1909, P.20,000.; in the month of December, 1910, P.50,000." The fourth paragraph provides for certain thirty day extensions of the time of payment in each year but the first and stipulates that if the company should extend such time until March in each year, Montelibano is to deliver, at every harvest from 1907 to 1910, both inclusive, 5,000 piculs of sugar, to be either sold or purchased by the Tobacco Company at the same price, Montelibano to pay a commission of one per cent.

It is further provided in the same subdivision of the contract, that, in order to "acquire the ownership" and secure a "transfer" to himself of all the credits and documents set forth in the first paragraph, and already delivered to him as recited, Montelibano must pay the P.130,000, agreed by him to be paid as a consideration for such transfer, in the instalments specified and within the times limited therefor, in cash; and, in the fifth paragraph, it is agreed that the first four instalments must be paid in cash in any event, but that, if Montelibano should not succeed in collecting a sufficient amount of cash to complete the P.130,000, the balance would be regarded as paid on the return by him of all documents pertaining to the credits that he might be unable to collect; that these would be received at their face value, and that with the P.80,000 to be paid in cash, they should aggregate P.179,177.86, ex-

clusive of interest on any of the credits from June 30, 1905.

As to interest, it is provided in the seventh paragraph that the P.130,000 should be paid solely from the capital of the credits; that, in the event that Montelibano should pay the P.130,000 in cash in the instalments specified, the Tobacco Company would renounce in his favor all interest that might be earned by all the credits mentioned from June 30, 1905, otherwise "both parties covenant that when the P.80,000 making up the four instalments have been paid, Mr. Montelibano will return the balance of P.99,177.86 and will deliver also the interest he may have received."

In the eighth paragraph it was agreed that the Tobacco Company should not be required to advance Montelibano "any sum whatever for use in the collection of the credits," etc., and that "the company accepts no responsibility for whatever actions may be instituted * * * for the collection of said credits." It is further recited that "Don Luis G. Espoy," in behalf of the company, etc., "confers upon Don Alejandro Montelibano authority to conduct, under his own responsibility, all the negotiations he may deem requisite for the collection of the credits mentioned, and, in the event of any judicial action being instituted, the company shall sell to Mr. Montelibano the credit which is the object of such litigation."

It was further agreed that Alejandro Montelibano would, at his own expense, provide the renewals of all documents, always with a view to improving, whenever possible, the guarantees pertaining to the credits respectively, and that in no case should he diminish or reform them except by authority of the company; also that the sum provided for in each instrument as a fine against the debtor to defray costs and attorney's fees in the event of litigation should be considered as "in favor of Mr. Montelibano, as well as participation in the credits, in order to take care of the expenses incurred by his judicial proceedings." On its part the Tobacco Company obligated itself, on settlement of any credit, "whether by payment or transactions," to cancel it on the proposal of Mr. Montelibano, the latter to have authority, in the meanwhile, to give "partial receipts" for whatever sums he should collect, and further that in the event that after payment by him of the four instalments

amounting to P.80,000., the sum of the cancellations and collections should not reach that amount, to regard the excess paid by Montelibano as an "adance" and to permit him to participate in the credits returned by him to a corresponding extent.

The above, we think, covers all the material provisions of the contract of October 25th, 1905, as set forth in the document of November 10th, of that year. It only remains to add that that document, after quoting the contract in question and describing the property in Silay mortgaged as security for the performance by Alejandro Montelibano of his obligations thereunder, provides that "by virtue of the aforesaid document, dated the 25th of October of the present year, the aforesaid Dona Liceria Montelibano ratifies the mortgage constituted by her husband, Don Alejandro Montelibano, upon the properties described" and "authorizes the aforesaid company, in case of the nonfulfilment by her husband of all that is stipulated in said instrument of obligation, to proceed, judicially or privately as it deems desirable, against the properties mortgaged, she waiving from this time whatever action may hinder the proceedings which said company might institute," etc.

The other contract referred to in the record—the one a copy of which is attached to the cross-complaint and marked Exhibit B—is dated the 7th of December, 1908 (R., pp. 13-17). After reciting, in substance, the provisions of the former contract and acknowledging payment by Alejandro Montelibano, on the 11th of October, 1907, of the first instalment of P.20,000 (the one that was due in December, 1906), and a payment on account of the second instalment of P.736.95, grants extensions of time for the payment of the balance of the second and the whole of the third instalments, due, respectively, December, 1907, and December, 1908, to March, 1909, the document adds:

"Therefore, I, Alejandro Montelibano y Ramos, together with my wife, Liceria Montelibano, parties of the second part to this contract, in consideration of all that is heretofore set forth and the extension by me requested,
* * * ratify, jointly with my wife, the mortgage exe-

cuted and constituted in favor of the Compania General de Tabacos upon the properties described in said instrument of the 10th of November, 1905, signed by us, and which is an integral part of the present instrument, and further obligate myself as follows: To neither depreciate nor diminish in any manner the guarantees of the debtors of the credits of the Compania General de Tabacos by me received, but, on the contrary, in the transactions and renewals of documents that I may be able to celebrate with said debtors, I acknowledge myself to be obligated to improve the guarantees in the form expressed in the third clause; and I ratify, furthermore, my obligation of not being allowed to acquire as my property the properties that guaranteed or guarantee said credits by me received, or those that may be adjudicated to me in any transactions or litigation until such time as I shall have delivered to the Compania General de Tabacos in cash the total amount expressed in the five instalments already mentioned."

"And, for the purpose of responding to the fulfilment of what is covenanted," he continued, "I increase my former guarantees, constituting in favor of the Compania General de Tabacos in a special manner a mortgage upon the hacienda 'Santa Catalina' or 'Bagacay,' belonging to me exclusively, free of all lien and encumbrance, the location and boundaries of which are as follows." The property is then described at length. This document is signed by Don Carlos A. Ferrandez, then agent of the Tobacco Company in Iloilo, and Alejandro Montelibano but not by Dona Liceria Montelibano, his wife. With respect to this the trial court found that when her husband took the document home to her in Occidental Negros for execution and registry, she refused to become a party to it, and that, therefore, "the additional security provided for in the new contract * * * failed," though the contract itself "was fully executed and delivered as between the plaintiff and the defendant" (R., pp. 22, 23).

2. *The facts as found by the courts below.* The Supreme Court below approved findings of the trial court that the ocn-

tract of the 25th of October, 1905, was entered into and ratified and extended as a public document by the instrument of November 10, 1905, in which Dona Liceria Montelibano was joined as one of the parties; that the Tobacco Company turned over to Alejandro Montelibano, for collection, P.179,177.86 of claims against the company's creditors (debtors we suppose the court meant); that in October, 1907, Montelibano paid the P.20,000 due in December, 1906, and subsequently an additional sum of P.736.95, and that, by order of the court while the action was pending, Montelibano "rendered some sort of an accounting, which, however, does not appear to include all the credits which were delivered to him as per contract of November 10, 1905, the amount of all the credits accounted for falling short of the total, though the difference is small."

It was further found that there had been a breach of contract by Montelibano; that Montelibano had collected P.61,715.98 and only turned over P.20,736.95; that in an action against Emilio Escay, one of the debtors, to recover what was due by him, the Supreme Court of the Islands reduced the amount by P.7,738; that the balance (P.22,086.43) was paid in full as a result of execution of the judgment, as was also the claim against Quirino Gamboa, amounting to P.6,178.10; that at the sales of their respective properties under such execution, said properties were purchased by one Richard Nolan, without any money being paid, and afterwards transferred to Montelibano, who still held them at the time of the trial; that a receiver had been appointed; that a portion of the credits and property involved had come into his possession, and that the credits and property remaining in the custody of Montelibano or that of the receiver were as stated in the decision.

3. *The conclusions of law.* The conclusions of law that were approved by the Supreme Court below (as counsel for appellants gather from the various parts of the decision) are that the credits in question were turned over to Alejandro Montelibano merely for collection; that the second contract (the one of December 7, 1908, Exhibit B) became, by execution and delivery, effective as between Alejandro Montelibano and the Tobacco Company, though the wife refused to be-

come a party, and, for that reason, the additional security by way of mortgage provided for therein failed; that Alejandro Montelibano "having failed to perform the contract on his part, the defendant is entitled to a return of the property, in so far as it can be returned, and to judgment for the value of the balance which cannot be returned."

The court further concluded that that "value must be determined as the proceeds which the plaintiff received from such claims, together with legal interest upon the amount of cash received by the plaintiff upon such claims from the time of the commencement of this action, which was by filing the complaint herein on the 4th day of March, 1911;" that "for the satisfaction of this indebtedness on the part of plaintiff to defendant, the securities given by plaintiff and his wife in accordance with the terms of the document made on November 10, 1905, are liable," and (this is in the amended judgment (R., p. 39) that interest should be paid by Montelibano to the company on the amount adjudged to be due "at six per cent per annum from the 4th day of March, 1911, the date of the commencement of this action."

POINT 1

THE SUPREME COURT OF THE ISLANDS ERRED IN AFFIRMING THE HOLDING OF THE COURT OF FIRST INSTANCE TO THE EFFECT THAT UNDER THE CONTRACTS, COPIES OF WHICH ARE ATTACHED TO THE CROSS-COMPLAINTS AS EXHIBITS A AND B, THE CREDITS INVOLVED WERE DELIVERED TO THE APPELLANT ALEJANDRO MONTELIBANO, NOT AS PURCHASER, BUT MERELY AS AGENT FOR THE PURPOSES OF COLLECTION, AND THAT, THEREFORE, THE TOBACCO COMPANY IS ENTITLED TO A RETURN OF THE UNCOLLECTED CREDITS OR THEIR VALUE.

The transaction between the parties in this case, it is respectfully submitted, contains all the elements of an unconditional sale and ought to have been so construed. It may be that on a first or casual reading, the contracts in which the

arrangement is set forth appear to provide otherwise. It occurs to us that if so this may be due to lack of intelligent translation—though, it must be confessed, it is not stated in the record that the originals of the contracts are in any other language than English. Yet that they were in Spanish seems obvious from the circumstances: the names of the parties, the prevalence of that language in the Philippines, the peculiarities in the forms of expression in the instruments themselves, etc.

Nevertheless, many indications that an unconditional sale was really intended seem perfectly clear, and, from the wording as it appears in English and from the general context of the instruments—obscure though the meaning is in some of their parts—we think the other indications of such an intention may reasonably and ought properly to be inferred. It is perfectly clear, for example, that a definite money purchase price was agreed upon, i. e., P.130,000. It is perfectly clear that there was a delivery in full of the things that we contend were in fact purchased by the appellant Alejandro Montelibano, that is, the accounts or credits, with all the documents pertaining thereto in the way of security for the recovery of the debts represented, and that there was an acceptance thereof by Montelibano.

It is perfectly clear also that the Tobacco Company did not require the amount collected to be turned over at the time of collection but granted Montelibano credit with respect to the payment of that purchase price—in other words, did not require cash on delivery but agreed that payment might be made in instalments at future dates, which of course is entirely consistent with the theory of unconditional sale. It is clear also that the first four instalments of P.20,000 each were to be paid *in cash* and *in any event*; that as a consideration for extensions of the time within which such payments might be made (if the extensions were for more than thirty days and from December to March), Montelibano was at each harvest during the years covered by the instalments to deliver to the Tobacco Company 5,000 piculs of sugar, to be either sold or purchased by the company, and was to pay the company a commission of one per cent; that the Tobacco Com-

pany guaranteed the existence and legitimacy of the credits, though not the solvency of the debtors.

And it is also perfectly clear that, because the subjects of the sale were mere choses in action and not in the nature of tangible property, real or personal, the Tobacco Company vested in Montelibano the power to conduct all negotiations and institute any proceedings in court that he might regard as necessary for the purpose of reducing those choses in action to possession; that, in the event of legal proceedings to collect any credit, the company was formally to assign to Montelibano the one that might be the object of the litigation (true, the contract says "sell to Montelibano," but we think that the sense in which the word is used is obvious, for the purchaser could not bring suit on such a claim unless it were formally assigned even if it were sold to him); also that the Tobacco Company declined to accept any responsibility whatever for, and, as a consequence, to become a party to, such litigation, or even to advance anything for costs or for any other use in connection with the attempts to collect; that the company was to release debtors on settlement of the claims against them, "whether by payment or transactions," on the proposal of Montelibano, and that the sums stated in the documents accompanying the accounts as fines against the debtors for the purpose of defraying costs and attorneys' fees if litigation should have to be resorted to were to be regarded as in favor of Montelibano in order that he might be reimbursed for any expense to which he might be put in that regard.

It is also clear that Montelibano paid the first instalment of P.20,000 and something on account of the second instalment; that those payments were accepted by the Tobacco Company; that at his request for considerable extensions of time within which to pay the balance of the second and the whole of the third instalment, the extensions were granted on payment by him to the company of P.500 as compensation for the concession (R., p. 15); that, as partial security for the payment of the purchase price, Montelibano and his wife executed a mortgage in favor of the Tobacco Company on real property of the value of P.46,000 and that Montelibano tried to give additional security of the same sort as a further consid-

eration for the extensions of time granted in the second contract and was only prevented by the refusal of his wife to join him in the execution of the mortgage.

Now, what are the provisions of those contracts that could possibly have led the courts below to regard the transaction as one in which a mere agency was created? First, there is the one in the fifth paragraph of the first contract permitting Montelibano, if he should not succeed in collecting enough to pay the fifth instalment of P.50,000 in cash, to return all claims remaining uncollected and receive credit therefor in settlement in full of his indebtedness to the company, in which event he was to forfeit the interest that might accrue on the claims while in his possession and all further participation in the principal—in other words, his profit in the transaction.

That is, he was to take the risk that all purchasers take who buy with a view to speculation. The difference between the cash purchase price (P.130,000.) and the book or face value of the claims (P.179,177.86) was P.49,177.86. It was to be presumed that some of the claims, or at least that parts of some of them, were uncollectible. That is so in nearly all such cases and must have been in this, because the company in terms in the first contract refused to guarantee the solvency of the debtors. Montelibano, therefore, was to take the risk, if he should elect to pay the whole of the purchase price in cash, of making what profit he could out of any claims that might remain uncollected after he should have made collections aggregating P.130,000 and that profit was to be augmented—perhaps made up entirely if many of the debts should turn out to be bad—by the interest.

But that provision, as it seems to us, was merely permissive in character. There was nothing in either contract *requiring* him to make any collections, or even to attempt to make any. Neither was there anything requiring him to pay the instalments with the specific moneys he might collect from those particular debtors. If his experience with them should prove so unsatisfactory that he should not care to go on after paying the first four instalments in cash, he might give up and make the final payment and secure his release from further obligation by surrendering to the company all his remaining

property rights in the affair—that is all. If, on the other hand, he should prefer to retain those rights in the hope of eventually realizing some profit, he could obtain the money to complete his payment from some other source. There was nothing to prevent that, therefore nothing in this phase of the matter that is inconsistent with the intention on the part of the company to sell and on the part of Montelibano to purchase outright.

It is the same with the provisions respecting the purchaser's obligation to preserve the integrity of the securities given by the debtors to guarantee payment of the amounts due them and with his further obligation not to acquire the ownership of any of the properties so pledged until he should have paid the purchase price in full and in cash. Of course, if he was to have the option to make the last payment by the return of all uncollected claims, it was only proper that the company should protect itself by such stipulations in order that its own interests should not be impaired any further than need be in the event that those uncollected claims should be thrown back in its treasury for collection. If the option itself does not deprive the transaction of the character of an unconditional sale, such conditions as these certainly could not—and it is self-evident that such an option could not, for since it is an option, to be exercised or not as the holder might please, it could not possibly constitute a condition that must be fulfilled before the purchaser could acquire full title.

That this is the construction that the parties themselves placed on the transaction appears from that very document of November 10, 1905, in which is incorporated the contract of October 25, 1905, attached to the cross-complaint as Exhibit A, for after setting forth the contract of October 25th, the document reads (R.: p. 10):

“Such is the document executed by Don Alejandro Montelibano and Don Luis G. Espoy on the 25th of October of the present year, in which the said company *ceded* to the said Mr. Montelibano all the credits set forth in the same to the end that the *cessionary* might carry into effect the collection from all the debtors of the company of the

debts set forth in the inserted document, the total amount of which aggregates P.179,177.86, by means of the authority conferred by said company upon said Mr. Montelibano to enable him to carry out *upon his own responsibility* all the negotiations he might deem necessary for the collection of the credits mentioned, and that in the event of any judicial action being instituted the company would cede in sale to Mr. Montelibano the credit which was the object of said litigation."

The expression "cede in sale" may be a little ambiguous, but, as in the other instance, above mentioned, in which the word "sale" was used, it seems clear that the intention was to express the idea of a formal assignment of a character that might be introduced in evidence in the case as constituting Montelibano's right to sue. The general purport of the above would seem to indicate plainly enough that no such relation between the company and Montelibano as that of mere principal and agent was intended.

In the contracts Montelibano is not called an agent and no equivalent expression is used, he is not required to account for any amounts that he might collect, he is not required from time to time to turn over to the company such amounts as and when collected, he is not forbidden to compromise claims without authority of the company, no salary, commission or other compensation is provided for (except the possibility of profit if the whole of the purchase price should be paid in cash, and that of course is not a form of compensation that could in any way pertain to an agent as distinguished from a purchaser), and no provision is made in either contract for the contingency—the very contingency that occurred in this case—that Montelibano should fail to pay the whole of the P.80,000 that it was stipulated should be paid in the first four instalments. Such precautions would hardly have been omitted, we should think, if the Tobacco Company had really intended to constitute Montelibano its agent.

And for the same reasons, we respectfully submit, this transaction could not properly have been held to involve a *conditional* sale. There was no condition precedent with which

Montelibano had to comply in order to acquire title. If he could not collect enough to make the last payment of P.50,000 in cash, he might make it by restoring to the company the claims on which he had failed to collect, thus relinquishing his chance of profit, but he was not compelled to. He might make that last payment out of his own pocket, or borrow the money, or obtain it from any other source, for all that appears to the contrary in the contract.

The provision in the fourth paragraph of the first contract (R., p. 8) that "if Don Alejandro Montelibano should pay at the times provided the P.130,000, *all the credits and documents of the debtors which are now delivered to him*, as specifically set out in paragraph one, *will be transferred to him*, and consequently Don Alejandro Montelibano agreed to pay in cash to the Compania General de Tabacos de Filipinas, in the instalments set out, the sum of P.130,000 in order to acquire the ownership of the rest of the credits," though apparently negating our contention, is not really in conflict with it. It is evidently an awkward translation. Besides, the last clause is strictly in accord with the option above referred to and by the ownership of the *rest* of the credits," clearly implies that immediate ownership by the purchaser of at least part of them was contemplated.

And it follows that if he immediately acquired the ownership of any part, he must at the same time have acquired the ownership of the whole, for no distinction is made in the paragraph reciting the delivery, or anywhere else, between the claims that he might succeed in collecting and the ones he might be unable to collect; and, so far as the provision that on payment of the P.130,000, all the credits, documents, etc., "will be transferred to him" is concerned, the theory as to any subsequent transfer of title is set at naught by many other provisions of the contracts to which we have above referred. There could be no more complete and effectual transfer, as we view the transaction, than was actually made at the time of the delivery of the credits and documents and the execution and delivery of the contract. There was nothing thereafter that Montelibano could not do with the claims that the company could do before the contract was entered into, ex-

cept only that he might not impair the securities guaranteeing the payment of its debts, and that, as we have seen, was only a reservation intended to protect the company in the event that he should elect to avail himself of the option to make the last payment by returning the claims he might fail to realize on.

The judgment of the trial court, therefore, it seems to counsel for appellant, should have been, not for money found to have been collected and not turned over to the Tobacco Company, with interest from the date the action was begun, and for the restoration to the company of the uncollected credits; it should have been for the unpaid balance of the purchase price—that is the difference between the P.20,736.95 that was acknowledged to have been paid and the P.130,000 agreed to be paid, or P.109,263.05, and, as no interest on deferred payments was provided for in the contracts, the amount so adjudged should bear interest only from the date of judgment. As that judgment now stands the money and value of the property awarded the company amount in all to P.190,842.83 and this total does not include the interest that the judgment requires the appellant to pay.

POINT 2

THE COURT BELOW ERRED IN AFFIRMING THAT PART OF THE JUDGMENT OF THE COURT OF FIRST INSTANCE WHICH HOLDS THAT INTEREST MUST BE PAID BY APPELLANTS TO THE TOBACCO COMPANY, FROM THE DATE OF THE BEGINNING OF THE ACTION, ON THE MONEY FOUND TO HAVE BEEN COLLECTED AND NOT TURNED OVER TO THE COMPANY AND IN AFFIRMING THAT PART OF THE JUDGMENT WHICH HOLDS THAT ANY INTEREST WHATEVER MUST BE PAID BY APPELLANTS ON THE VALUE OF THE UNCOLLECTED CREDITS.

The later proposition in the above heading is a corollary of the one in the preceding point. If the transaction involved in this case was an unconditional sale, it follows that the Tobacco Company has no right to the return of the uncollected

credits, and that, therefore, it has no right to interest on their value, either such interest as had already accrued at the time of the beginning of the action or that which might accrue thereafter. In view of all the facts and circumstances, and particularly the fact that this action was begun by appellants in the evident belief that they were the injured parties, it would seem that interest on such valuation ought, in any event, not to be allowed from any date prior to that of the judgment.

This, we respectfully submit, is true also of the interest the court allowed on the P.40,979.03 adjudged to be due on account of collections made by the appellant Alejandro Montelibano and not turned over to the Tobacco Company. The Court of First Instance does not state in the opinion that accompanies the judgment at what particular times the amounts embraced in the P.40,979.03 were collected, but it would seem that even those dates would be far more logical to fix as the periods from which to reckon such interest than is the date fixed by the court, i. e., the date of the beginning of the action.

It would be only just, however, that in any event, since no provision was made in the original contract entered into between the parties in this case for the payment of any interest whatever on the instalments stipulated for—that no such provision was inserted even in the supplemental contract wherein the extensions of time for paying some of those instalments were granted—if *any* interest is to be awarded on that part of the judgment which refers to the money collected and not turned over, it should be reckoned from the date of the judgment and not from the date of the beginning of the action.

In this connection, it should have been taken into consideration also that in their answer to the cross-complaint, the appellants made the following averment (R., p. 19):

"That plaintiffs never have declined, and do not now decline, to fulfill their part of the obligations contracted by the contract, copy of which is attached to the cross-complaint as Exhibit A; that the plaintiffs have offered, and

offer, to pay to the defendant, in addition to the sum of P.20,736.95 already paid, the sum of P.51,525.05, which sums, together with the sum of P.7,738., in which amount the credit of Escay was reduced by the Supreme Court, aggregate the sum of P.80,000, and to hand back to the defendant credits and parts of credits of those mentioned in the cross-complaint to the value of P.99,177.86, and to return to it the corresponding documents received, but that the defendant has refused to accept the same."

It will be seen that, added together, the P.80,000 and the P.99,177.86 above mentioned, total P.179,177.86, the exact amount of the credits originally sold to the appellant Alejandro Montelibano, and that this offer, therefore, constitutes a tender of full performance on the part of appellants of their obligations under the original contract by way of exercise of the option in the fifth paragraph thereof granted, and which tender the appellee declined to accept. This in itself, as it seems to counsel for appellants, ought to have been held, not only to relieve appellants of any possible obligation to pay interest, but costs as well, and to have limited the scope within which judgment could properly be rendered to that amount and return.

CONCLUSION

That tender, however, as counsel for appellants regard it, can not be construed as an admission in conflict with the position taken in this brief; that the transaction in question involved an unconditional sale, because, aside from the fact that it proffers no more than what Senor Montelibano was to be permitted to do under the terms of the fifth paragraph of the original contract, it was evidently made for the purpose of avoiding litigation and with a view to an amicable adjustment out of court.

Wherefore, and because of the other considerations herein suggested, it is the contention of counsel for appellants that the court below should be reversed and that the case should be sent back either for a new trial or for the entry of a judg-

ment that will conform to the principles of law and of justice and equity that are referred to above.

Respectfully submitted,

HARRY W. VAN DYKE,

COUNSEL FOR APPELLANTS AND PLAINTIFFS IN ERROR.

Washington, D. C., March 4, 1916.



10
No. 217

Office Supreme Court, U.
FILED
MAR 4 1916
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

ALEJANDRO MONTELIBANO Y RAMOS AND
LICERIA MONTELIBANO Y CONLU, APPEL-
LANTS AND PLAINTIFFS IN ERROR,

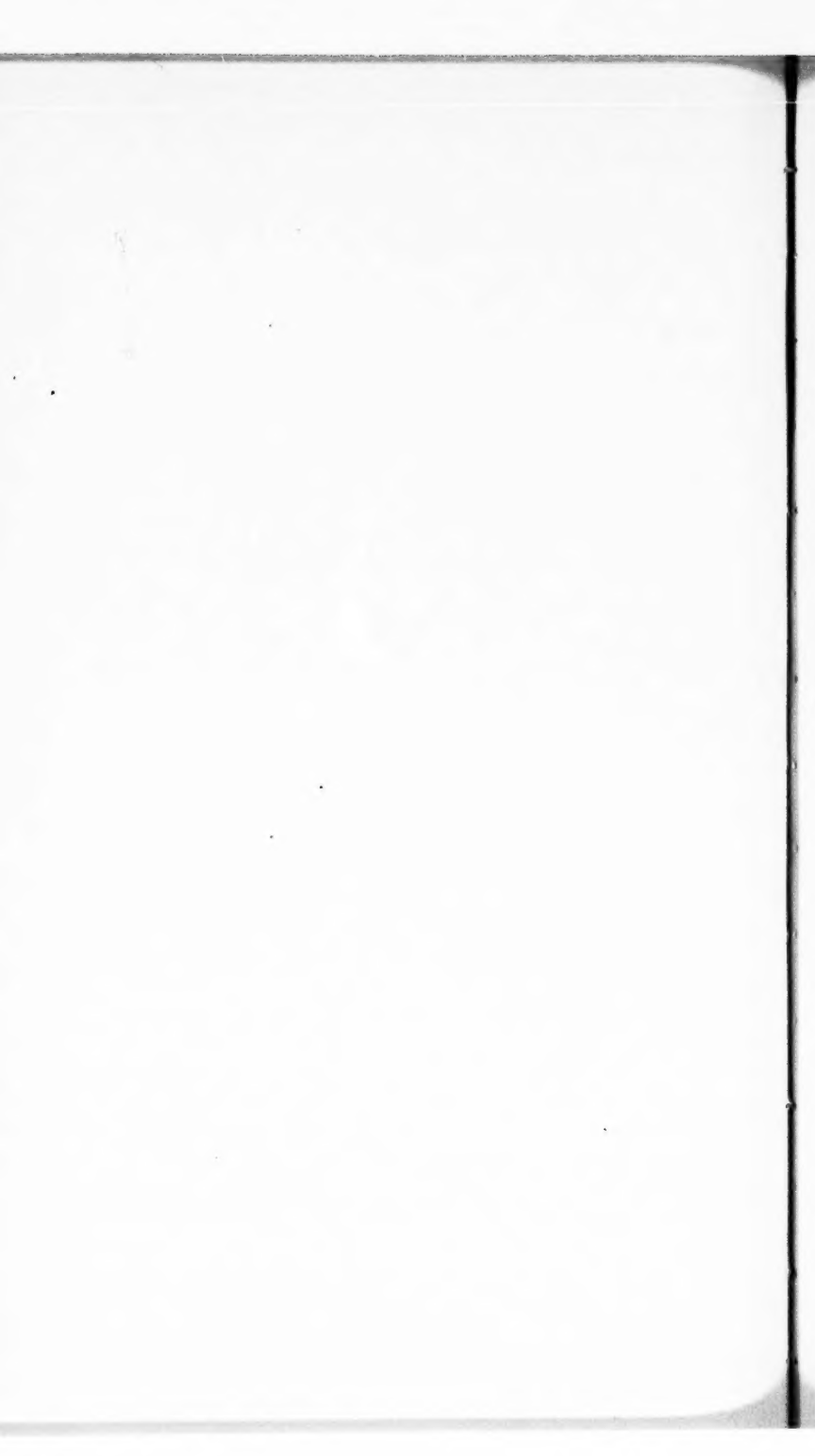
vs.

LA COMPANIA GENERAL DE TABACOS DE
FILIPINAS.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

Brief for Appellees and Defendants in Error.

C. L. BOUVÉ,
For Appellees and
Defendants in Error.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

ALEJANDRO MONTELIBANO Y RAMOS AND
LICERIA MONTELIBANO Y CONLU, APPEL-
LANTS AND PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE
PILIPINAS.

No. 217

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

Brief for Appellees and Defendants in Error.

STATEMENT.

The plaintiffs, (here appellants) brought an action in the Court of First Instance of the City of Manila against the defendants (here the appellees) for the nullification of a contract by the terms of which, the plaintiffs alleged, the defendants sold to the plaintiffs credits in favor of the defendants representing the sum of 179,127.86 pesos Philippine currency. The plaintiffs allege three causes of action; first that with the exception of the sum of 29,491.04 pesos, P. c., the credits set forth in the contract "do not exist in the amount stated therein nor are they legitimate in their

nature", and for this reason are uncollected. As a second cause of action, the plaintiffs allege that relying upon the existence and legitimacy of the credits in question, they executed a mortgage deed to the value of 46,000 pesos as a guarantee for the contract, and for the reasons already stated, ask that it be cancelled. As a third cause of action, they alleged that in addition they were required by the defendant to execute a guarantee for the payment of the sum of 20,000 pesos and to that end the plaintiff, Alejandro Montelibano y Ramos executed a mortgage on said property belonging to him of the value of 20,000 pesos and for the reasons already given asks that the mortgage be cancelled. And in addition to the request that the contract in question be declared null and void and that the mortgages in question be cancelled, the plaintiffs request that the defendant shall be ordered to pay to the plaintiffs the sum of 129,734.29 pesos. (Record, 27-30.)

The defendants presented an answer and cross-complaint, said cross-complaint setting out the contract to which the complaint refers and an additional contract signed by the defendant and the plaintiff, Alejandro Montelibano y Ramos, the stand taken by the defendants being that under these contracts the title of the credits in question were not to pass to the plaintiffs except on the fulfillment of certain conditions therein expressed which were not fulfilled; that by the terms of those contracts and until the fulfillment of the conditions prescribed therein by the plaintiffs, the credits in question were simply delivered to him for collection; that the amount which the plaintiffs were to turn over to the defendants within the time and at the dates set out in the contracts was 130,000 pesos, of which the plaintiff had only

turned over 20,736 pesos, and that the time within which the 130,000 pesos was payable under the contract had expired.

The defendant prayed that the action against him be dismissed, that on account of sums collected and credits uncollected by the plaintiff, Alejandro Montelibano y Ramos, be rendered, that the plaintiff, Alejandro Montelibano y Ramos be ordered to pay to the defendants the sum of 50,000 pesos, damages for failure to meet other conditions of the contract set out in the complaint; and that a receiver be appointed. (Record, pages 2-17.)

To the cross-complaint the plaintiffs submitted an answer denying the jurisdiction of the court in which they themselves had brought the action, denying specifically certain allegations of the cross-complaint, duly designated in the answer thereto, and allege past and present offers of payment to the defendants. (Record, 18 and 19.)

The Court of First Instance found that the conditions in the contracts had not been met by the plaintiffs and that "the defendant turned over to the plaintiff claims against defendant's creditors for collection as set out in the contract" with the agreement that the defendant would sell, transfer and deliver to the plaintiff the whole remaining of the claims, if by December, 1910, the plaintiff should have paid the defendant the sum of 130,000 pesos in five different payments made during that and the four preceding years. The court found that no payment was made by the plaintiff to the defendant within the time stated in the contract and that during the whole five years but two payments were made aggregating 20,736.95, and these were not made on time. The court further found that in December, 1908, the

plaintiff being in default of payment, a new contract was drawn for all the parties appearing in the contract of Nov. 10, 1905, and that this new contract was fully executed and delivered as between the plaintiff and defendant; that under the conditions of this contract the former security given for its performance remained as before but that the additional security provided for in the new contract which the plaintiff's wife was requested to sign, failed because of her refusal to execute the contract. The court also found that in addition to the 20,736.95 pesos which the plaintiff had delivered to the defendant there remained 40,979.03 pesos collected by the plaintiff and undelivered to the defendant. The court further found that the plaintiff had in the course of the collection of these credits obtained a judgment against the estate of one Emilio Escay in the sum of 22,086.43 pesos, and that the claims against said Emilio Escay and one Quirino Gamboa had been prosecuted to judgment, execution issued and the property of the debtors sold to satisfy the judgments; and that under an agreement with the plaintiff one Richard Nolan had purchased the property at sales without any money being paid and that afterwards he transferred the property thus purchased to the plaintiff, who, at the time of the decision, still held them in his possession.

With regard to this contract also the court found that there had been a breach on the part of the plaintiff so that "any contemplation of the terms of the contract in relation to conditions of payment need not be considered". The court held that the property received from the sale arising out of the collection of the credit against Emilio Escay and from the sale of the property of Quirino Gamboa, and the whole of various claims and the unpaid balances on others must

be held by the plaintiff in trust by the defendant. (Record, 20 to 21.)

The trial court subsequently modified its order with regard to the amount of 40,979.03 pesos, representing the amount of money actually collected on the claims by the plaintiff and not paid over to the defendant, by deducting therefrom the sum of 22,086.43 pesos, the judgment obtained by the plaintiff against Emilio Escay, "if the defendant seeks to recover upon a subsequent clause of this order the property which was sold as the result of the action brought by the plaintiff on the Emilio Escay debt or the value thereof in case delivery of the property is not made"; the clause referred to being that in which judgment was entered in favor of the defendant, "on the property known as the Escay property, which was sold as a result of the action brought by plaintiff on the Emilio Escay debt, and in case delivery thereof cannot be had, the sum of 40,000 dollars, the value thereof, providing that the defendant does not elect to take the full judgment for money collected as hereinbefore stated, and if such election is made then this clause in relation to the return of this property is annulled, and the property known as the Gamboa property, which came into the plaintiffs hands by virtue of the proceedings against Gamboa on his debt to the defendant, or in case delivery thereof cannot be had, the sum of 6,178.10 pesos for the costs of this action." (Record, 30, 31.)

The Supreme Court of the Philippine Islands, to which appeal was made by the plaintiffs, held that the judgment of the trial court was correct inasmuch as the title of the credits never passed to the plaintiff. "They were delivered into his possession for collection, with the agreement that he could become the owner thereof by paying 130,000 pesos in the manner

specified. No other payments were made as agreed, and as a consequence the credits remained the property of the defendant company. A refusal to deliver them was properly the subject of a counter claim and the possession of a demand for affirmative relief. The court correctly found that the credits must be returned or their value paid. (Record, 33.)

From this decision the plaintiffs appeal to this court.

ARGUMENT.

An examination of the Record, fails to reveal any merit in the following Assignments of Error:

FIRST ASSIGNMENT OF ERROR.

1. The Supreme Court of the Philippine Islands erred in holding the plaintiff, Alejandro Montelibano, was constituted the agent of the defendant by virtue of the contracts, Exhibits A and B, attached to defendant's answer and cross complaint.

None of the testimony taken at the trial is made a part of the record. The only source of reference which can serve as a basis for this court to determine whether or not the plaintiff, Alejandro Montelibano, was constituted an agent of the defendant company in the transaction, is the contracts themselves. To this source this court must turn, then, in case it decides to go into the facts for the purpose of determining for itself whether or not the concurrent findings of the Supreme Court of the Philippine Islands and the trial court are correct on the question of agency.

Although it has been recognized that this court will examine the record for the purpose of determining whether or not the conclusions reached below are

wholly unwarranted by the testimony in a given case, it is the usual thing for the court to accept the concurrent conclusions of the Trial and Appellate Courts. De la Rama against De la Rama, 201 U. S., 303, 309. But here there is no testimony to examine.

A brief reference to the contents of both contracts, herein designated as Exhibits A and B, may not be out of place. Exhibit A is the contract of October 25, 1905, ratified on the 10th of November, 1905. In this contract it is stated at the outset that the representative of the defendant "delivers to Don Alejandro Montelibano for the purpose of collection under the conditions hereinafter expressed, the following credits" (Record, page 6), designating them. In paragraph four of the contract it is stated:

"Both contracting parties agree that if Don Alejandro Montelibano should pay at the time provided the 130,000 pesos, all the credits and documents of the debtors which are now delivered to him as especially set out in paragraph one, will be transferred to him, and consequently Don Alejandro Montelibano agreed to pay in cash to the Compania General de Tabacos de Filipinas in the instalments set out the sum of one hundred thirty thousand pesos, in order to acquire the ownership of the rest of the credits." (Record, page 8.)

Again:

"The Compania General de Tabacos de Filipinas will not advance to Don Alejandro Montelibano any sum whatever for use in the collection of the credits mentioned in the first paragraph." (Record, pages 8 and 9.)

In the second paragraph of paragraph eight, the plaintiff, Montelibano, is conferred by the defendant company:

“Authority to conduct under his own responsibility all the negotiations he may deem requisite for the collection of the credits mentioned; and in the event of any judicial action being instituted, the company shall sell to Mr. Montelibano the credit which is the object of such litigation.” (Record, page 9.)

“Such is the document executed by Don Alejandro Montelibano and Don Luis G. Espoy on the 25th of October of the present year, in which the said company ceded to the said Mr. Montelibano all the credits set forth in the same to the end that the cessionary might carry into effect the collection from all the debtors of the company of the debts set forth in the inserted document, the total amount of which aggregates the sum of one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos, by means of the authority conferred by said company upon said Mr. Montelibano to enable him to carry out upon his own responsibility all the negotiations he might deem necessary for the collection of the credits mentioned, and that in the event of any judicial action being instituted the company would cede in sale to Mr. Montelibano the credit which was the object of said litigation.” (Record, page 10.)

Exhibit B, which is the contract of December 7, 1908, executed by the defendant and the plaintiff Alejandro Montelibano, but not executed by his wife relates:

“Whereas Don Alejandro Montelibano y Ramos, by virtue of the instrument executed by

him and by the Compania General de Tabacos de Filipinas on the 25th of October, 1905, received for collection various credits in favor of the Compania General de Tabacos amounting in all to the sum of one hundred and seventy-nine thousand one hundred and seventy-seven pesos and eighty-six centavos (P. 179,177.86." (Record, page 13.)

In its third paragraph it states:

"Whereas, It has also been agreed in said instrument that Mr. Montelibano in his negotiations for the collection of the credits in favor of the company by him received may not in any manner depreciate," etc. (Record, page 14.)

And lower in the same paragraph:

"Whereas, It has also been stipulated in said instrument that Mr. Alejandro Montelibano y Ramos can acquire the ownership of said credits delivered to him by the Compania General de Tabacos only when he shall have delivered to said Compania General de Tabacos in cash, and in no other way, the total sum of the amounts specified in the five instalments," etc. (Record, page 14.)

The sixth paragraph of this contract states that:

"I (plaintiff, Montelibano) ratify furthermore my obligation of not being allowed to acquire as my property the properties that guaranteed or guarantee said credits by me received, or those that may be adjudicated to me in any transactions or litigation until such time as I shall have delivered to the Compania General de Tabacos in cash the total amount expressed in the five instal-

ments already mentioned.” (Record, pages 15 and 16.)

And again:

“And lastly, ratifying all the obligations that I contracted in the instrument of the 25th of October, 1905, I also set forth that before proceeding to the sale of any of the credits ceded or of the guarantees of the same, I will request the due conformity of the Compania General de Tabacos.” (Record, pages 16 and 17.)

That title to the credits was not to pass to the plaintiff until the fulfillment of conditions which never came to pass is clearly provided in express terms in each contract. That the relation of principal and agent for collection was intended to exist and did exist under these provisions seems equally clear. It results that the Supreme Court and the Court of First Instance held correctly on this point.

SECOND ASSIGNMENT OF ERROR.

The Supreme Court of the Philippine Islands erred in not sustaining the third defense of plaintiffs to the answer and cross-complaint of the defendant.

The third defense referred to is to be found on page nineteen of the Record, and reads as follows:

1. “That the plaintiffs never have declined and do not now decline to fulfill their part of the obligations contracted by the contract, copy of which is attached to the cross-complaint as “Exhibit A”; that the plaintiffs have offered and offer to pay to the defendant, in addition to the sum of P20,736.95 already paid, the sum of P51,525.05,

which sums, together with the sum of P7,738.00 in which amount the credit of Escay was reduced by the Supreme Court, aggregate the sum of P80,000.00, and to hand back to the defendant credits and parts of credits of those mentioned in the cross-complaint to the value of P99,177.86, and to return to it the corresponding documents received, but that the defendant has refused to accept same."

It will be noted that in paragraph two of the second defense in the above answer to the cross-complaint the plaintiff, Montelibano, specially denies the execution of the contract of Dec. 7, 1908. The trial court, however, held that this new contract was fully executed and delivered as between the plaintiff, Montelibano, and the defendant, although not signed or executed or delivered by the plaintiff's wife (Record, 22); and that under the conditions the former security given for its performance remained as before and that the effect produced by the failure of the plaintiff's wife to sign was simply to cause a failure of the additional security provided in the new contract. (Record, 22 and 23.) Irrespective, however, of the question of what contractual obligations arose between the parties under the document signed by the defendant and the plaintiff, Montelibano, on Dec. 7, 1908, the contents of that document constitute a frank admission on the part of the plaintiffs that they have wholly failed to fulfill their part of the obligations to which they were bound by the contract of October, 1905. In fact the terms of the document of December, 1908, show beyond any question that it was drawn up with the expectation of having the plaintiff's wife sign it and was signed and drawn up for no reason other than that the plaintiff had altogether failed to meet his obligations under the contract of 1905.

In this contract, as in the former one, the plaintiff's wife would seem to figure merely as a guaranty for her husband and the failure thereof would not effect the validity of the principal contract.

THIRD ASSIGNMENT OF ERROR.

The Supreme Court of the Philippine Islands erred in rendering judgment against the plaintiff Alejandro Montelibano for the sum of P40,979.03 pesos, together with interest thereon of six per cent. per annum from March 4th, 1911, and alternative judgment for the sum of P103,645.70, or the delivery of the credits with documents and securities as set forth in the judgment of the Court of First Instance, and for the delivery to defendant of the Escay and Gamboa properties or the value thereof fixed at P46,178.00 pesos.

The sum of P40,979.03 represents the difference between the sum found by the trial court to have been actually collected by the plaintiff, Montelibano, to wit, 61,715.98, and the sum of P20,736.95, turned over to the defendant by plaintiff. (Record, 23.)

The sum of P103,645.70 represents uncollected balances of credits as against certain creditors enumerated in the opinion, and the whole of the claims against others specifically designated (Record, pp. 23, 24, 25). The judgment calls for the possession and delivery of the above mentioned credits together with all the documents of security or guarantee thereon, and if delivery thereof can not be had, the values thereof as set forth against each credit, which is determined as the fact of the credit. (Record, 24.)

The Escay property was, as has already been stated, sold as the result of the action brought by the plaintiff on the debt which Emilio Escay owed the defendant.

The judgment obtained by the plaintiff against Esecay amounted to P22,086.43. This property was sold under execution to satisfy the judgment to the defendant under the circumstances set out in the decision of the Court of First Instance, on page 23 of the Record. This property, as above stated, the Court of First Instance held that the plaintiff acquired and held in trust for the defendant under the conditions of the contract. (Record, 24.) The value of this property was ascertained by the court to be P40,000. Wherefore the court properly entered judgment on behalf of the defendant for all the Esecay property, and in case delivery could not be had for the value of said property, provided that the defendant did not elect to take the full judgment or money collected, to wit, P40,979.03; in such cases the judgment for money actually collected by the plaintiff to be diminished by the sum of P22,086.43, which represented the judgment of the Supreme Court in the case prosecuted by the plaintiff against Esecay for moneys owed to the defendant. The same principle guided the court in so much of its judgment as represented to the Gamboa property.

I submit that there appears to be no ground on which the concurrent decisions of the Court of First Instance of Manila and the Supreme Court of the Philippines seem open to attack.

I therefore respectfully request that the decision of the Supreme Court of the Philippines be affirmed.

Respectfully submitted,

C. L. BOUVÉ,
*For Appellees and
 Defendants in Error.*